

John Wood
9 THE
PROCEEDINGS
IN THE
HOUSE of COMMONS,
Touching the Impeachment of
EDWARD

Late EARL of
CLARENDON,
Lord High-Chancellour of *Eng-*
land, Anno 1667.

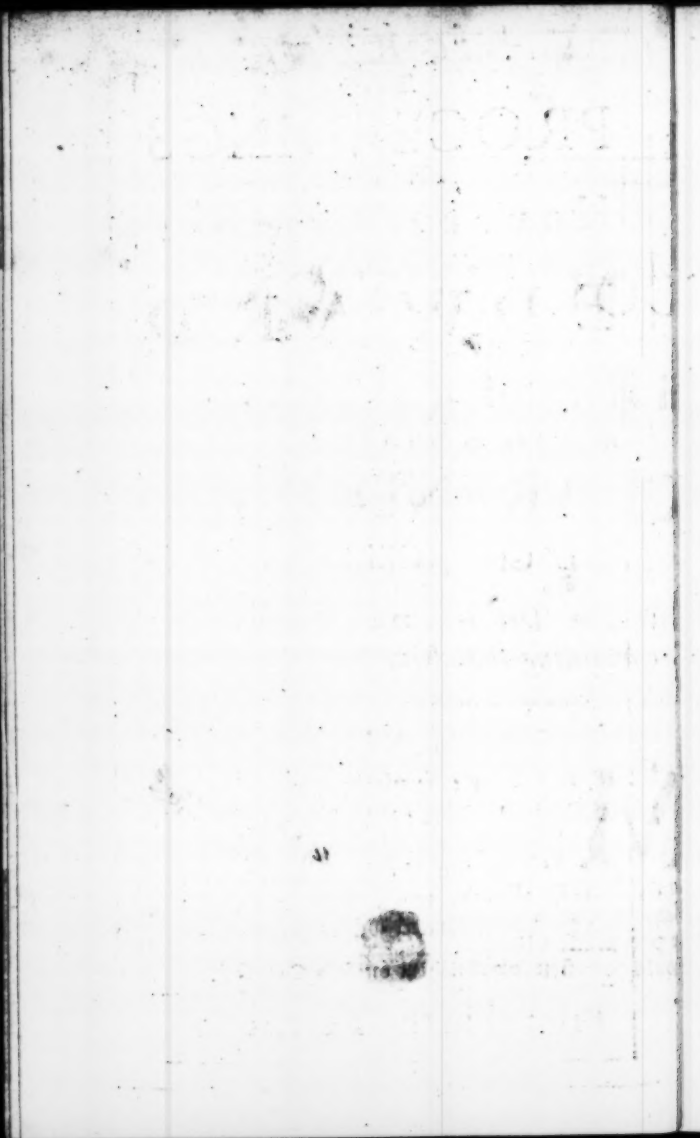
With the many Debates and Speeches in the House. The Impeachment Exhibited against him. His Petition in Answer thereto. As also the several Weighty Arguments concerning the Nature of *Treason, Bribery, &c.* By *Serj. Maynard, Sir Ed. S. Sir T. L. Mr. Vaughan, Sir Rob. Howard, Mr. Hambden*, and other Members of that Parliament.

TOGETHER,

With the Articles of *High-Treason* Exhibited against the said Earl, by the Earl of *Bristol* in the House of Lords on the 10th of *July*, 1663. With the Opinion of all the Learned Judges therein.

The Second Edition carefully Corrected.

Printed in the Year, 1700.



THE
PREFACE,
TO THE
READER.

I Think there needs not much
be said to recommend the
following Sheers to the In-
telligent Reader. It has been
the Opinion of the Wisest Men
that Letters, Memoirs, and Pub-
lick Speeches, have ever been the
Clearest and Most Exact Histories
of Times, and have given the
truest Light into the Spirit and
Bent of a People, especially, where
Liberty, that Darling of the Uni-
verse, that sweetest Cordia' of Man-
kind, bears Sway; and where shall
We find it so justly Claim'd, so
strenuously maintain'd as in our
A 2 English

The PREFACE.

English Constitution? a Constitution so exactly fitted for the Preserving that Inestimable Jewel, that the Deepest Arts and Subtilties of the most Crafty Statesmen cou'd never yet Undermine, or Ravish our Envied Freedom from us; on the Contrary, They have ever met their own Destruction, when They have been so Rash as to make the Attempt; and I dare boldly say, that We our selves must give it away, if ever We are not Masters of it; for it cannot be forc'd from us.

If We reflect on the Hardships other Nations Groan Under, and then consider the Plenty and Ease We sensibly Enjoy, We must justly Honour the Memories of our Glorious Ancestors, who have handed down so dear a Prize to us. If we look backward, we shall find
there

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there have been great Attempts, both Open and Secret, to break in upon, or lessen our just Rights and Priviledges, but there have ever been Persons of Generous Spirits and Unshaken Resolutions, Who have nobly Oppos'd the bold Invaders, being neither to be Aw'd nor Brow-beaten by any Higher Power, nor Brib'd by the most Advantageous offers of Profit or Honour, to betray so Glorious a Cause: We have never yet found a Wicked Counsellour or an Evil Minister that cou'd Escape the Justice of a House of Commons. 'Tis true in some former Reigns a Parliament was no very desirable Thing, and seldom call'd, but whenever they met they bravely Attack'd the Enemies of the Nation tho' never so Potent, and brought down such
as

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*as have thought themselves Secure,
and out of Reach; and I trust, as
we have not yet, we never shall,
see Ill Men in such a Station.*

*We live now (God be thanked)
in a time when we need not fear
Encroachments on our Just Li-
berties and Properties; are we
not Blest with a King who hath no
Design to Enslave or Burchen his
People? Have we not Ministers
that Act with Uprightness and In-
tegrity? Are we not rul'd by a
Monarch who makes the Interest
of the Nation his own, and regards
Merit only in the Choice of his
Ministers? do we see any Court-
Minion or haughty Favorite Ad-
vanc'd? or any Man of worth pass
Unregarded and Despis'd? In
short, have we not a King who only
thinks himself happy, because he sees
his People so? And as the common
Adage*

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Adage has it, Regis ad exemplum. Do we not see our Grandees following their Great Masters Steps? Are not Envy and Ambition now Banish'd the Palace Gates? What Courtiers do we now find breaking their Promises, or giving oylly Words instead of just Performances? Do they now covet Perferments to get vast Estates? Are they not contented with their moderate Perquisites? What Ministers can the most observing Eye find Guilty of Acting, or Advising, Ill? Or who amongst them are afraid to stand the Test of the severest Scrutiny? Such is the Happiness we now Enjoy, such are the Blessings of our Present Administration. But I have wander'd beyond my purpose, my Zeal to so much Goodness has carry'd me wide of my Design, which was to say something by way of Preface of the following

THE PREFACE.

following Sheets, which were Publish'd, not to reflect on the Memory of any, but at the desire of some very Judicious Persons, who thought it pity a Collection so fill'd with Law and solid Sense shou'd be kept secret; and I believe none, who read it, but will highly applaud the Publishing. The World must own that the Learned Persons, whose Speeches are contain'd in the following Pages, have been famous for the depth of their Judgment, and profoundness of their Sense, and many of them have been justly Esteem'd the most eminent Lawyers of their Time: I shall only add that several of our greatest Men have highly valued it in Manuscript, and I doubt not but all who read it, will think it fit, not only for a Lawyer's, but every English Gentleman's Study.

A

COLLECTION

Of Proceedings in the
House of Commons,

About Impeaching the EARL of

CLARENDON,

Late L^d. CHANCELLOR.

*With the Debates and Speeches
concerning that Matter.*

October 26th, 1667.

MR. Ed. Seym. Charged him *viva*
voce with many great Crimes,
whereupon a Debate arose what
Proceeding ought to be had up-
on it, some moving to Impeach him in the
Name of the *Commons* till Articles should
be prepared, others urg'd, that Witnesses
should be first examined to see how the
Charge

B

Charge could be made good, least failing, it should reflect on the Honour of the *House*; after long Debate, a Committee was appointed to search Records for Parliamentary Proceedings in the like Cases, and to make Report.

30th, The Report being made by Sir *Tho. Litt.* that various Proceedings were found in several Parliaments, it occasioned a long Debate, several Members speaking to the effect following,

Sir *Tho. Litt.* That in Cases Criminal, they find Proceedings to have been, sometimes by Articles, sometimes by word of Mouth; but in Capital Crimes no Proceedings appear till the Earl of *Strafford's* Case, against whom the *House* carried up a general Impeachment, the Reason whereof seems to be this: Some Votes were made in the *House* at which the King takes Offence, as if they would proceed upon common Fame; whereupon they vindicate their Proceedings as done in a Parliamentary way, and appoint a Committee to withdraw for about half an Hour to consider the Matter for a Conference with the Lords about the Charge, and upon their Report a general Charge is carried up to the Lords Bar; the principal Charge then was for advising to bring over the *Irish* Army, and the single Proof was Sir *Henry Vane*, so the Impeachment went up for *High-Treason*, tho' no Member

Member would positively say he would make the Charge good.

So for the *Bishop of Canterbury* there was no Impeachment, but a Charge in general.

And if you take not the same Course now, but insist upon examining Witnesses first, the Difficulties will be unanswerable ; for is it like that Men before they shall see you in earnest will have their Names produced against the Earl of *Clarendon* ? If this be your proceeding, we must never expect to Impeach a great Man more. If you think there is nothing in the Charge leave it, but if you think 'tis worth your while take heed of making such a dangerous Precedent as by neglecting it to wound your Liberties ; but proceed in the usual way with a general Impeachment.

Serj. Mayn. I stand not up to give Advice, but to speak to matter of Fact in the business of *Strafford* and *Canterbury* ; I attended that business from the beginning : *Sir John Clotworthy* informed something against *Strafford* to be direct Treason, that he had assumed an Arbitrary Power in *Ireland*, and dispossessed one *Savage* by force of Arms, and undertook to prove it. *Sir Henry Vane* also told them that he had a Note taken out of his Fathers Cabinet, containing the Advice which *Strafford* gave the King in that Case. Namely, the King wan-

ting Money, and the Question being how he should supply it, he replied, *That if the Parliament was refractory and would not, you stand loosed and absolved from Rules of Government; you have an Army in Ireland which you may employ to reduce them.*

Then there was a Debate whether they should accuse him of Treason. And Sir Edward Herbert (the Attorney) said, if you are perswaded the Truth is, as is pretended, you may, and so it was; but when the close Committee had examined the business, they moved the *House*, that some Lawyers might be added to them, and had they gone, when they said they were ready, they had not touched one Hair of *Strafford's* Head. Then it was considered what was fit to be done: To accuse him of *Treason* would be a dangerous President, as if out of many other Crimes a *Treason* could be drawn, thereupon it was *Resolved* not to demand Judgment from the Lords, because some Articles were not *Treason*. Then it was propounded not to State what his Offences were, lest it should give advantage to inferior Courts so to proceed; but said he deserved to be accused of *Treason*, and in conclusion a Proviso was added, not to make that Case a President.

For the Bishop of *Canterbury*, the four Articles were general, and he was long in Prison without any proceeding against him; but after long time he demurr'd, then new Articles were framed, on which he dyed.

Mr. John

Mr. John Vaugh. You have had a Charge opened of a strange Nature, and I know not what part of it can be proved, but the reputation of *This House* is at Stake, and of the King too ; For, where a Charge is brought in by some of your Members, whereof one Article is, That he should say such words, of the King, as by a Statue made by you is a *Premunire*, and to give Council to levy War upon the Kingdom ; is it agreeable to our Duty to the King and Kingdom to let it die ?

For the Person concerned, I know not which way his Honour can be whole without his giving an Answer to his Charge ; for Mark the Consequence, if the King should take him to favour again before clear'd, will not the World say a Person is received to favour again, who gave the King Council against the Kingdom, and traduc'd the King, and how can he be whole in his Honour this way ;

Obj. But it will be said, we must have ground to put him to Answer.

Ans. Whether you have ground enough to prove I know not, but you have ground enough to make him Answer to clear himself. Suppose those two Articles had been Charged on a Member of this *House*, what would it have become that Member to do ; Should he sit still and say, I will make no Answer, but see whether the *House* will make more proof ; If he should do so, the

not making an Answer is Reason enough to Charge him.

I can give you Instances of Persons charged in Parliament, who, tho' not nominated, yet being (as it were) pointed at, Petitioned that they might Answer, and so would any Man ; but when this is bruited up and down, will not the World say ? You never ask the party whether Guilty.

The *Duke of Suffolk* was Charged upon Common Fame, and if that were a ground for a Charge then (which I do not say it was) so it is in this Case ; but he moved that he might be heard, and tho' it was desired he might be Committed, yet it was justly rejectly till he had Answered : Then for the Nature of the Charge, if it be true, it is very High, but whether it be Treason is another Matter, it is brought to you under no Name, when you make the Charge, it becomes you to say what it is ; therefore Choose a Committee to reduce the Accusation into Heads, and bring them to you, without which you cannot right you selves, nor him, if Innocent.

For the way of it, it cannot be thought fit to publish your Witnesses and the Matter before-hand ; if in private Causes the Defendant and Plaintiff should have a Publication before hand, no Cause would be rightly Judged, much less when you have Publication of all which concerns the One, but nothing of the Other. Again, if a
Witness

Witness be examined concerning Matters in his own Knowledge, if he gives Evidence, where he is not brought judicially to give it, if he hath testified any Thing which brings him within the Statute of false News, how can he avoid the Penalty? For its not enough for him to say he knows it but he must have others to justify it.

As for the Persons who bring the Charge, they are your own Members, which the Writs return for honest and discreet Men, and if you are satisfied of that, how can you reject their Complaint, tho' grounded upon *Common Fame*, as all Accusations are, seeing they tell you, they can bring Proof of what they say?

Then for *Common Fame*, if a Man spends largely, and hath no visible way to get an Estate, no Man accuseth him to have gotten it unlawfully; yet he may be put to clear himself from what *Common Fame* chargeth him with. Upon suspicion of Felony, I may bring a Man before a Magistrate to clear himself, so in the Course of *Indictments*, and *Presentments*, a Charge is given of what Things are to be Presented? then a Proclamation is made, That if any one can give Evidence, he may be Sworn, but if no Evidence appear, yet they may Indict.

Then it will be said, the Oath is a Material Thing, but we are proceeding without an Oath.

To this I Answer, What this *House* shall Charge is of more Authority than the Oaths of ordinary Witnesses; *Peers* tho' not upon Oath are supposed to do right, so are we upon the Reputation of our Honesty and Discretion.

Mr. *L. H.* I am sensible, the *House* may think me Partial, but I shall endeavour to shew my self not so much a *Son* of the Earl of *Clarendon* as a *Member* of this *House*; and I assure you that if he shall be found Guilty, no *Man* shall appear more against him than I; if not, I hope every one will be for him as much as I; let every *Man* upon his *Conscience* think what of this Charge is true, for I believe that if one Article be proved, he will own himself Guilty of all.

Sir *Hen. Fin.* An Impeachment there must be, if there be Cause; such Accusations are not to be passed over in silence.

I believe not one truth in the Law more than this Proposition, That there is no such thing as Treason by Common-Law, or by Equity, and we hold our Lives by that Law; before the 25th of *Ed.* the 3d. a *Man* could scarce speak any think but it was Treason in *Parliament* or *out*, but no *Man* ought to die as a Traitor, who hath not literally offended that Law, or some other made since: There is indeed in that
Law

Law a Proviso about the Parliaments declaring what is Treason, but note the danger of taking declaratory Powers, which I fear hath brought us into a Reckoning of Blood, which we have not yet paid for.

The Power of Parliaments is double, *Legislative*, which hath no bounds, *Declaratory*, by pronouncing Judgments.

And tho' I know not what the *Legislative* Power of a Parliament cannot do, yet it is not in the power of the Parliament, King, Lords, nor Commons, to declare any thing to be Treason which is not in the Common-Law Felony before. The Proviso in *Sirafford's* Case was (it's true) made for Inferior Courts; but I hope we shall not so proceed as must needs draw after it a *Verdictum in Exemplum*, and your own Act this Parliament shews, That all done by *Sirafford*, *a-part*, or *together*, was not Treason: And it behoves us to take heed we thwart not our own Argument.

For the manner then, Consider how you should proceed if it were out of Parliament, and how the bringing of it into the *House* alters it.

If it were out of Parliament, without doubt the Accusation should be proved before hand, and those who discover it are guilty of Felony. This provides for the Subject, that the Witnesses must be Two, and for the King, that none shall discover the Evidence.

But

But suppose the Charge be for Mifde-meanours, the Tryal then is not to be by the Lords, but by the Commons; for the Lords are his Peers only in Cases Capital. How then doth the bringing it in to Parliament alter the Case? If the Parliament set aside Laws in this Case, we should be happy to see Law declaring what is the power of Parliaments.

There is no President produced which is singly of Weight to guide you, therefore if you proceed, let it be as near as possible by the good Old Laws; Namely, That there be an Accusation founded upon an Oath and the Evidence kept secret, I propose that way for the very reason that others oppose it (*viz.*) The Accusation goes over the Kingdom, and it will bring dishonour to the *House*, the *King*, and the *Earl*; For the Honour of the *House*, it will be hard to say, the Charge was brought in upon misinformation; a Person accused for advising to bring in Arbitrary Government, &c. And for saying the King is not fit to Govern; If this be true, tho' it be not Treason in the formality of the Law, it deserves no less Punishment then if it were; but if not found Guilty, Consider the Case. If one say, *A* killed a Man and it is not so, must not he give reparation? We have an accusation upon hear-say, but if it be not made good, the blackest Scandal which Hell can invent, lies at our door.

Then

Then *Sir Tho. M—rs* moving to referr it to the Committee of Grievances.

Mr. Vaugh. You should have put the first Question before another had been moved, the Earl of *Middlesex* (*Cranfield's Case*) will not hold paralel; He was accused of Bribery, which might be proved by their own Books, but this is for Scandalizing the King, &c. And where shall the Committee of Grievances enquire about it? you say let them hear the Persons.

But suppose they be of the Lords *House*, Can you send for them? Or if you do, will they come and say it? The matter of this Accusation is such, that if it lies in the knowledge of a single Person, if he delivers it extrajudicially (which he doth, if not upon Oath) he may be undone by it, and hazard his Person too: At the Committee of Grievances the Persons must be known, and what they can say, and then we may conclude what will follow: Besides, their Quality may be such as they cannot be brought, or their Discretion such as they will not answer.

Sir Rich. Temp. Tell but the Lords that a Man in publick place hath misbehaved himself, and they will sentence him, if he purge not himself; Never yet were Witnesses examined before the Tryal in case of Treason

Treason or Felony, for then, if there be two Witnesses, a way may be found by *Poyson*, or some other way, to take away one.

Serj. Mayn. No Man can do what is Just, but he must have what is true before him; where Life is concern'd you ought to have a moral Certainty of the Thing, and every one be able to say upon this proof in my Conscience, *This Man is guilty*. Common Fame is no ground to accuse a Man where matter of Fact is not clear; to say an Evil is done, therefore this Man hath done it, is strange in *Morality*, more in *Logick*.

Upon the whole Debate it was Voted,

That the Committee do reduce the Accusation to Heads and present them to this House.

Novem.

November 6th, 1667.

Sir *Tho. Litt.* Reports that the Accusation was reduced to Heads, which he read in his Place, and afterwards delivered the same in at the Clerks Table, which are as followeth *viz.*

I. **T**HAT the Earl of Clarendon hath designed a Standing Army to be raised and to govern the Kingdom thereby, and advised the King to Dissolve this present Parliament, to lay aside all Thoughts of Parliaments for the future, to govern by a Military Power, and to maintain the same by Free Quarter and Contribution.

II. That he hath, in the hearing of the King's Subjects, falsely and seditiously said, That the King was in his heart a Papist, or Popishly Affected, or words to that effect.

III. That

III. That he hath received great Sums of Money for the procuring of the Canary Patent, and other illegal Patents; and granted illegal Injunctions to stop proceedings at Law against them, and other illegal Patents formerly Granted.

IV. That he hath Advised and Procured diverse of His Majesty's Subjects to be Imprisoned against Law, in remote Islands, Garrisons, and other Places, thereby to prevent them from the Benefit of the Law, and to produce Presidents for the Imprisoning any other of His Majesty's Subjects in like manner.

V. That he procured His Majesty's Customes to be Farmed at under Rates, knowing the same; and great pretended Debts to be paid by His Majesty, to the payment of which, his Majesty was not in strictness bound: And afterwards received great Sums of Money for procuring the same.

VI. That he received great Sums of Money from the Company of Vintners, or some of them or their Agents, for In-
hauncing

hauncing the Prizes of Wines, and for freeing them from the payment of legal Penalties which they had incurred.

VII. *That he hath in a short time gained to himself a greater Estate than can be imagined to be gained lawfully in so short a time, and contrary to his Oath, he hath procured several Grants under the Seal from His Majesty, to himself and Relations, of several of His Majesty's Lands, Hereditaments and Leases, to the disprofit of His Majesty.*

VIII. *That he hath Introduced an Arbitrary Government in His Majesty's Foreign Plantations, and hath caused such as complained thereof before His Majesty and Council, to be long Imprisoned for so doing.*

IX. *That he did reject and frustrate a Proposal and Undertaking, approved by His Majesty for the preservation of Mevis, and St. Christophers, and reducing the French Plantations to his Majesty's Obedience after the Commissions were drawn for that purpose, which was the occasion*

occasion of our great Losses and Damage in those Parts.

X. That he held Correspondence with Cromwell and his Complices, when he was in Parts beyond the Seas attending His Majesty, and thereby adhered to the King's Enemies.

XI. That he advised and effected the Sale of Dunkirk to the French King, being part of His Majesty's Dominions; together with the Ammunitions, Artillery, and all sorts of Stores there, and for no greater value, than the said Ammunitions, Artillery, and Stores were worth. 1

XII. That the said Earl did unduely cause His Majesty's Letters Patents, under the Great Seal of England, to one Dr. Crowther, to be alter'd, and the Enrolment thereof to be unduly rased.

XIII. That he hath in an Arbitrary way examined and drawn into question divers of His Majesty's Subjects, concerning their Lands, Tenements, Goods, Chattells, and Properties, determined thereof at the Council Table, and stopped Proceedings

ceedings at Law by Order of the Council-Table, and threatned some that pleaded the Statute of 17 Car. 1.

XIV. That he hath caused Quo Warranto's to be issued out against most of the Corporations of England, immediately after their Charters were Confirmed by Act of Parliament, to the intent he might require great Summs of Money of them for renewing their Charters, which when they complied withal, he caused the said Quo Warranto's to be Discharged, and Prosecution therein to cease.

XV. That he procured the Bills of Settlement of Ireland, and received great Summs of Money for the same in most corrupt and unlawful manner.

XVI. That he hath deluded and betrayed His Majesty and the Nation in all Foreign Treaties and Negotiations relating to the late War, and betrayed and discovered His Majesty's secret Councils to his Enemies.

XVII. That he was a principal Author of that fatal Council of dividing the Fleet; about June, 1666.

The Clerk having read them a second time it was moved, That in regard the Articles were many, they might be referr'd to the Committee to see how far they were true, because Fame is too slender a ground to bring a Man upon the Stage.

Sir *Fran. Goodr.* Seconds it, because new matter was now added to what was formerly charged *Viva voce* in the *House*.

Sir *Rob. How.* Suppose the Earl of *Clarendon* Innocent, and yet Charged and Imprisoned (which is the worst of the Case) he afterwards appears Innocent and is discharged, receiving no more hurt than other

Subjects have done; Namely,
* *D. Buck.* * one great Man lately.

Object. But why should you Commit him?

Ans. For proof, whether the Articles be true or not: Suppose Men for self preservation will not venture to come, not knowing how they may trust themselves, and so you have no Proof, He very guilty, and You not able to proceed; is the Inconveniency greater for an Innocent Person (if he prove so) to suffer a few days, than for you to loose your Reputation for ever. If this Man be not brought to his Tryal, it may force him to fly to that which he Counsell'd, *that is*, that we may never have Parliament more.

Sir

Sir *Fra. Cochr.* I am not against proceeding, but unsatisfied to do it without Witness, it being like Swearing in *Verbo Magistri*.

Sir *John Holt.* That the Committee undertake to make good the Charge, otherwise examine Witnesses.

Mr. *Vangh.* You admit the Accusation to be matter for a Charge, if the Committee find proof; if you intend to make this a distinct Case I leave it to you; but if this be to settle the Course of the Proceedings of the *House*, I am against it; for this is ordering a way of Proceeding in the Earl of *Clarendon's* Case, which shall not be a general Rule. Tho' I cannot say one of the Articles to be true, yet I know them to be a full Charge if made good, and you are prescribing a Course neither proper, nor ever practised. A Witness who speaks without Oath is subject to Damage; not so upon Oath, because the Law compells him: And whereas it hath been said, if Witnesses attest before the *House of Commons*, what Judges dare middle in't? I answer, such Judges as meddled in the Case of Sir *John Elliot*, &c. and the *Ship Money*.

Sir *Rich. Temp.* A Grand Jury is capable to present upon their own knowledge, and are Sworn to keep the King's Council and

their own, and I believe there is not one Article of the Accusation but will be made good.

Sir Rob. How. As I am sensible of the danger of publishing Witnesses beforehand, so I would have every one satisfied ; therefore take the Articles one by one, and according as you shall find what your Members may say for the Truth, you may be induced to proceed or not.

Sir Tho. Osb. The *House* ought to have something to induce their belief, which they have had from several Members, and I know how some will be made good.

Sir Tho. Littl. What Article Members of the *House* do not offer you matter to induce you to believe, you may lay it aside ; therefore hear what shall be said and proceed accordingly.

Mr. John Tr. You cannot expect Witnesses will appear before you, Lords will not, nor can you expect Commoners should ; for when you are up and gone, nothing can protect a Commoner if this Information be not Judicial.

At last the Question was put whether to refer it to a Committee.

Yeas, 128.

Noes, 194.

Then the first Article was read to see what would be said to induce the *House* to Impeach.

The First Article read.

Sir Rob. How. } Heard from Persons of
Lord Vaugh. } Quality, That it would
be proved.

The Second Article was read.

Lord St. Joh. Persons of great Quality have assured him to make it good, and if they perform not, he will acquaint the *House* who they are.

The Third Article read.

Mr. Ed. Seym. Sufficient Persons will make it good, with this Addition, When he received the Money, he said, *So long as the King is King, and I Lord Chancellor, the Patent will stand.*

The Fourth and Fifth Articles read.

Sir Rich. Temp. Divers have undertaken to make them good, if they do not I will Name them.

About the receiving Money of Vintners.

Sir Rob. C--r. That he knows who will prove it.

About his getting a great Estate so suddenly.

Mr. Ed. Seym. I suppose you need no proof the Sun shines at Noon-day.

Sir Tho. Litt. The matter of Fact in the Article is easily made out, for his Place as Chancellor could not be worth above 4 or 5000 l. per ann,

About introducing an Arbitrary Government in the Plantations.

Sir Tho. Litt. } One Farmer and others
Sir Tho. Osh. } came from the *Barbadoes* to complain of it, and lodg'd their Petition in this *House*, but were Imprison'd that they might not be heard.

About frustrating Proposals for preserving Nevis, &c.

Sir Char. Wheel. My Lord Chancellor only opposed it.

About holding Correspondence with Cromwel.

Mr.

Mr. *Swinf.* That is Pardon'd by the Act of Indempnity.

Mr. *Vaugh.* The Committee were aware of that, but the Defendant may plead it, and prove that he is not Out-law'd.

Sir *Char. Wheel.* I want not clearly to prove it.

Sir *Rob. How.* For such secret things as these, he ought to plead, notwithstanding the Act of Oblivion, that the World may know who are undiscern'd Enemies.

Mr. *Hamd.* It is not only an Act of Parliament, but Oblivion; and no Man ought to be so much as Accused for what was done before.

Mr. *Vaugh.* If the Pardon be general, the Judges and you are to Note it, but if it hath Qualifications (as that Act hath) they are not to Note it; for you must say there is no Indictment or Outlawry against him (for such the Act excepts) or the Article is to stand.

Then the Act was read.

Mr. *Swinf.* The Clause for Pardon is Absolute, and any Man accused, pleading it shall not be Sued, nor his Fault mentioned,

and this is to Offences and Offenders; and for those who betrayed the King beyond Sea (who are excepted) they must be Prosecuted within Two Years.

Object. You will say, he may plead that Act.

Ans'r. By the same rule, any Man who committed a Fault, during the Troubles, may be put to plead it for Pardon.

Serj Mayn. We profess that there shall be Candour in our Proceedings, Do we therefore believe this great Man is Out-law'd? If not, how shall we accuse him of what we believe not true.

Mr. Vaugh. When I am satisfied of a thing I am not ashamed to own it; I find now, having perused the Act, that it is within the Clause. The Indempnity is general, and he is within it if not excepted, the Exception reaches those who have held Intelligence with the King's Enemies, so as they be Prosecuted within two Years, this he is not, therefore is clear.

So upon the Debate, the Article was expunged the Paper without a Vote.

About the Sale of Dunkirk.

Sir *Tho. Osb.* A great Lord told me that the Earl of *Clarendon* had made a bargain for *Dunkirk* three quarters of a Year before it was known.

About Sealing Dr. Crowther's Patent.

Mr. *Street.* The King gives the Living to *Crowther*, in the Grant is a mistake of a County, *Crowther* finds the mistake, and Petitions the King to amend it, the King calls for the Chancellor and Seal, and in the King's presence it was amended and Sealed.

Sir *Tho. Littl.* The Crime seems as great as a Chancellor could commit; the King was to present by such a day, or not at all, the Error was found after the day, so that the King (by Act of Parliament) had lost his right. The Chancellor did alter the Patent, and the Record was fetch'd away by one of the Chancellor's Servants, and brought back rased, and altered, which might be done (and in other Cases is done) where a word only hath been mistaken; but that is in Case of something perfectly in the King's Power, and to save new sealing; but here could be no new sealing the time being elapsed: It was to throw another Man out of his Freehold, and is a great Crime.

About

About drawing Mens Lands into Question.

Mr. Thom. I shall be able to make it out.

About Quo Warranto's to Corporations.

Sir Tho. Litt. This is so Publick a thing, that it need not be proved.

About the Settlement of Ireland.

Sir Rob. How. I doubt not but it will be made out.

About Forreign Treaties.

Sir Tho. Litt. This will appear by the Treaties themselves, putting us in hopes of Peace, and so hindering the Fleets setting out.

About Miscarriage of the War.

Mr. Thom. I want not Persons to bring to bring to make it good.

Sir Tho. Litt. Sir Edward Sprag desires Money to give an Intelligencer, and has it; Sprag brings the Intelligencer to the King, the King commands him to meet him at the Chancellors, there he met the King, and then Order was given to divide the Fleet.

Mr.

Mr. Marvel Charged *Mr. Seymour* with saying in his Accusation, That the King was insufficient for Government, which is now omitted in the Charge, and desires he may declare where he had it.

Mr. Seym. The Party that told me at first, differ'd something afterwards, therefore I rather withdrew it than to trouble you with uncertainties ; but a Gentleman in the *House* can give you farther satisfaction in it.

Sir John Den. A Peer of the Land heard the Earl of *Clarendon* say in a Coach, That the King was an unactive Person and indispofed for Government : This will be made good.

Upon Debate it appearing probable that these words were spoken before the Act of Oblivion, it passed over.

About the Customes.

Sir Rich. Temp. I have been informed that he had a share for under-letting the Customes and 40000*l.* Bribe for getting pretended Debts from the King.

Sir Tho. Osb. The Earl of *Clarendon* said, Bid who would for the Customes, none should have them but the Old Farmers.

Mr.

Mr. *P---n*. Having gone over the Articles, we should know where and when the words were spoken.

Mr. *Seym*, That will be a way to Suppress the Evidence, I hope you will Impeach him at the Lords Bar, and in due time produce your Witnesses.

Mr. *P---n*. You must resolve to Impeach him of Treason, or Misdemeanour, and name it accordingly.

Sir. *Ed. Walp*. You ought first to give a Title to your Impeachment ; for if it be for Treason, you will move for Commitment ; if it be for Impeachment in general, not.

Mr. *Colem*, What is laid before you is only by Hear-say, but no Assurance that it will be made good ; only that if they who reported it do not make it good, you shall know who they are. In the Earl of *Strafford's* Case (the worst of Presidents) the *House* proceeded not till one spake in the *House* upon his own Knowledge, and another engag'd his Reputation to make it good.

Sir *Rob. Ark*. Those who have given you inducement to proceed, do it at third hand

hend, and tho' they may know the Credit and Impartiality of those that told them, yet you do not.

Sir *Tho. Litt.* A Question should be put, Whether this *House* hath sufficient inducement to Impeach; Afterwards Consider what the Title shall be, then appoint a Committee to frame Articles.

Which Question being put, was carried in the Affirmative..

Then Adjourned.

November, 9.

The First Article read.

Sir *John Goodr.* Treason ought to terminate in an Overt-Act, which designing is not, therefore pray read the Statutes.

Thereupon sundry Statutes were read.

25 *Ed.* 3.

1 *Hen.* 4. Cap. 10.

1 *Ed.* 6. Cap. 12.

1 *Q. Ma.*

13. *Car.* 2d.

14 *Car.* 2d. Cap. 29.

Mr.

Mr. *Sew*. Declared it to be transcendant Misdemeanour but no Treason.

Mr. *Vaugh*. Two Questions will be considered, One, whether what's Charged in the Article was Treason in Common-Law before the 25 *Ed*. 3. That so we may understand the nature of Treason; The other, Whether by any subsequent Act it is made otherwise.

Mr. *Wall*. The Advice given to the King I look upon to be this. To establish a New Government, To be Govern'd by *Janizaries* instead of a Parliament, To have a *Divan* and a great Minister of State, a *Kizier-Bas-fau*, a worse Plot than that of the 5th of *November*; There, if the Lords and Commons had been destroyed, there would have been Succession, but here both had been destroyed for ever. Then in order to the Debate, consider how the Law looks on it; for tho' we may accuse on less Evidence than she may Judge, yet we must be Cautious in naming the Crime: What therefore doth the Law call this before 25 *Ed*. 3? Then look whether the power of Constructive Treason be taken away since.

Sir *Fra. Goodr*. The matter concerns Life, therefore we should be wary in the Exercise of Legislative Power; you are not tyed to Rules,

Rules, but you are now a step towards Judicature ; The Common-Law is *Jus non Scriptum*, and tho' every Treason includes Felony, yet not every Felony Treason. 25 Ed. 3. There is a Declaratory Power, whether a thing be Treason, or other Felony, not whether it be Treason, and could not be declared Treason if not Felony before. In Cases Capital at Common-Law they might declare it Treason, but in Cases not Capital at Common-Law, they never exercised their Declaratory Power.

Among other things that Statute declares false Coin'd Money to be Treason, which is but Felony at Common-Law ; afterwards Money being imported, which was not according to the Stamp, there was no Punishment for it, but as a Misdemeanour : Therefore 4 Hen. 7. Provision is made against that Practice, and it is made Treason, but if the Parliaments Declaratory-Power could have Made it Treason, what needed a Statute on purpose ? So that I cannot think the Article before you is Treason, it not coming within the words of the Statute.

Mr. Vaugh. I shall speak to the first Question, whether this Article was Treason at Common-Law ; and first remove what some have asserted, Namely, That nothing is Treason but what was Felony before. 25 Ed. 3. where petty Treason is spoken of, the Wife killing the Husband &c. These words

words follow, If hereafter it come into Question whether there be another Treason, it shall not be resolved by the Judges, till the Parliament determine it ; For in petty Treason, if it be Treason, it must be Felony, because there is killing.

Then comes more, whether raising, &c. and it follows whether it be Felony or Trespas ; And the thing it self is more strange. None ever doubted, but that all Treasons of 28. Ed. 3. was Treason before, and was so resolved 12 Q. Eliz. That by that Act the King declares what should be Treason ; Namely, If any Man Vitiates the King's Eldest Daughter, &c. But by this Doctrine if it were not Treason, what was it ? Either Adultry or Fornication, when it is only the Eldest Daughter, not the Youngest.

It hath been in all Ages a Reputation to Persons who have been Councillors to Princes according to Emergencies to give Council to extricate out of danger. and therefore hard to tax a Minister of State in a Case which he acquaints his Master with ; for there can be no Treason but against the King himself.

I will shew you what I mean. It is true this is a Treason which cannot arise from Misprision, because it was spoke to the King himself ; but as a Minister of State he has liberty to give Council for the King's safety. If a Person be able to Inform his Master what Alliances are good for him, it his duty

ty; so what Trades are profitable; what not, &c. So where Men or Money are wanting, to advise how to extricate is commendable; but when it comes to this, that he breaks in upon the Laws, invading the Contract between the King and his Subjects, it will be as if a Man adviseth, That if the King wants Money, he may set up Highway Men to take it, and bring it to him; and so the skilfullest for breaking the Law shall be esteemed the best Councillor; therefore, whoever thinks to serve his Prince by breaking the Laws, he is so far from a wise Man, that he is the highest Criminal. &c. then for the Nature of the thing, the Treasons declared 25 Ed. 3. were declared by the King's Commission, and the Treasons were of that Nature which concern'd Council, &c. they were not like to be declared, and there is a passage in *Glanvil*, called *Seductio Domini Regis*, that is, deceiving the King to what is pernicious to Him, and his People.

Now see the Nature of this Crime; if a Man Counsel his Prince, and practice it such a way as shall render him Prince of Conscience, who hath broken his Oath, and all this to his Injury, so that he hath no Assent to it. Compare this with any Treason of 25 Ed. 3. consider it: Here is a person who gives the King Advice, which at once must make his People see he hath broken all his Faith to his Kingdom (and is not the Coun-

cel of Governing by an Army such?) all the Laws broken, to keep which the King has Sworn, and this the King put upon tho' not inclin'd to, I assert not this upon the Earl of *Clarendon*, but upon the Article, who doth this, Counsels the highest Treason against the Common-Law, because others are so; but if a Man will pretend to give Counsel, wherein many shall have no benefit by the Law, he breaks all parts, and therefore I think this Counsel was Treason at Common-Law.

Mr. *Colem*. The Question is, Whether it be in your Power to declare this Article Treason by 25 *Ed.* 3. If he advised an Army against the King's consent, it is against the Statute; but I suppose that the Expression in the Article was Advice to the King in Aid of his Government. Your Enacting Power is a kind of Omnipotency, but in a Declaratory Power you can declare no more than is committed to you, and with safety to the Subject you cannot declare this Treason; Then what must be our Rule in Declaring I dare not say: For scarce any Man can tell what was Treason before 25 *Ed.* 3. was made to bring things to a Certainty, and what was uncertain to them who made that Law can be certain to us now. As the Judges can declare no other Treason, so in your Declaratory Power neither can you declare Treason unless there

there be Resemblance to some other like Case: The Advice said in the Article to be given the King, cannot be within that Statute, unless the Councillour must run the hazard of his Advice.

Mr. Vaugh. The greatest Declarations of Treasons which ever were, equal not those 22 *Rich. 2.* in *Nottingham Castle*: The Judges are called to deliver their Opinions upon their Faith, and they declare the Acts to be Treason, because Felony before, and tho' some of them were hang'd for it, yet the Parliament declared the same Thing.

Serj. Mayn. Was, what is mentioned, Treason by the Common-Law, tho' so said by the Lords? And what was so declared was repealed, *H. 4.*

Sir Tho. Litt. Pray resolve whether it was Treason by Common-Law; and if so, when made so. Some think not, because they find not the Parliament declaring them Treasons, as being so at Common-Law, and that that Statute was made to bound them, but that was only to bound Inferior Courts, not themselves; for the Parliament makes not a new Crime and then Condemns it, but the Crime was before, and the Parliament declares it.

Sir *Ed. Thur.* Hath the Parliament declaratory Power now ? Yes, but it must be by King and Parliament, so it was in the Case of the *Genova* Ambassador. The Judges would not conclude the Articles Treason, nor would the Lords alone ; and if you come to an equal declarative Power with them, you must examine Witnesses, or go by a Bill.

Serj. Charl. The Question is, Whether it be Treason by the Practice of *England*, the Common-Law is the Custome of *England*, and the usuage is grounded on Presidents, I know not one President where Words or Intentions were Treason at Common-Law, for they are not Treason where no Act follows.

Sir *Rich. Temp.* The Article is Treason by Common-Law, and Judges have recourse to *Glanvil*, &c. Who say, that giving Advice to overthrow the Realm is Treason by Common-Law.

Serj. Mayn. The Question is whether he shall be Impeached of Treason upon this Article ? If you go to Treason at Common-Law before 25 *Ed. 3.* you fly out of sight, for the word *Seductio* was soon after called *Seditio*, Seducing, but not said to what ; nor were those Authors ever reputed of Authority

thority : It's true they are sometimes quoted for Ornament, but not Argument, and not one Case in one hundred of *Glanvil* is Law ; but when a Case comes that is the Sheet-Anchor of Life and Estate, you should be wary ; for by Wit and Oratory That may be made Treason which is not, and this which is a great Crime, ought not because great, to be made Treason.

Object. But it will be said, levying War against the Law, is against the King, and here was an intent to alter the Law.

Ans. True, yet a design no levy War is not Treason within the Statute, here is nothing of Act, but Words to that end ; If a Councillor gives bad Advice, it makes it not Treason, but by a Bill it may be made what you please. By that Statute of 25 *Ed. 3.* are more Treasons than are mentioned ; for it saith if any Case happen, the Judges shall stay till the King and Parliament hath declared, so that there is a Power, but the *Modus* is the Question, whether by Impeachment, or Bill ; you may the latter, not the former. It, was done, but you have Repealed it, and have said *None of*
 * *Of Strafford.* which pretended Crimes are Treason ; and what was pretended against him ? * That he had Traitorously Endeavoured (which is worse than design'd) to alter the Government, &c.

Now where is the Difference? Here is advice to Raise an Army, there to use an Army Raised, and these you have called pretended Crimes, and no Treason, which is not Comprehended by a Law; but to Impeach as a Treason, and yet the thing No Treason is strange. In this *House*, other then by Bill, you have no Power; you carry your Impeachment to the Lords, and they may give Judgment without coming back to you; declaring by Bill is by way of Judgment, but, as an Impeachment, is only an Accusation: So that whatsoever the Consequence is, the Lords judge it, and it never comes back to you, and if you go by Bill you make it Treason, *ex post facto*.

Mr. *Vang.* Concerning what you have declared about *Straffords*, that this Case is, if not less, equal to it, and you have declared that not one Charge against him is Treason is true thus far, when that Act was made I repaired to it, because there were some Things which should not have passed so, if there had not been something to secure such Charges as these; for there is no expression of any Particular Charge, but that the Charge against the Earl of *Strafford* was not in the particular, Treason, and in the Close of the Bill, it is said, that the whole Proceeding shall be taken away, and if so, no Man should speak against the Particulars, but look on it as Repealed.

Then

Then this is said to be levying War, and its true, it must be Actual, and so not within the Charge. And the Charge against *Spencer* was for Councelling the King, &c, and is called levying War against the Kingdom, and the Judgment against him was but Banishment; because the Sentence was mitigated at the instance of the King.

And for Council, tho' Council is given but in Words, yet Words are more than Council, and are an Action, otherwise a Councillour is Sworn to nothing.

But it may be thought I have not dealt ingenuously with the *House*, than which I abhor nothing more; when the Case of *Strafford* was before the Lords, I was of opinion the Parliament had no Declarative Power left, because 1 *Hen. 4.* there was an abolishing of all declared Treason, and that no Treason, for the future, should be so, and then the Treason about the *Genoua* Ambassadour was gone, and all declared Treasons were gone 1 *Hen. 4.* and no Statute hath recovered them, and if all Actual Treasons were taken away 1 *Hen. 4.* or if not then, 1 *Ed. 6.* then what doth the first of *Q. M.* do, unless it take away all declaratory Treason?

Upon the whole, the Question was whether to accuse of Treason upon the first Article.

Yeas, 103.

Noes, 172.

275.

November, 11.

The Second Article was read.

Mr. Pr--n. Let the Act made by you about defending the King be Read, because it limits Prosecution to a Time, to see if this be within Time.

Mr. Vaugh. In Things wherein there is a publick Defaming the King, it becomes no Man here to defend the Person accused, if the Charge be not proved, let the Party himself plead it ; you had that which induced you to Impeach him, and have declared not to Impeach of Treason upon the first Article : And if any Man will add to the rest of the Articles he may, but you ought to accuse.

Mr. Solicitor. None accuseth but for Justice sake, and should be glad if the Party accused prove himself Innocent. There is a Duty to the King, and to Truth, and it is not fit that an Article of this Kind, brought into the *House*, should be laid by, upon pretence that the time is elapsed ; for the Crime
is

is more than what is mentioned in the Act made by you ; it is an Offence at Common-Law, and if it be prosecuted by Fine and Imprisonment, no time is limited.

The Third and Fourth Articles read, and Voted.

Mr. Vaugh. Your reading every Article is needless, unless it be to see whether any one may be Charged as Treason, for if one may be objected against, so may all as to Misdemeanours.

Fifth Article read.

Sir John Sh--w. The old Farmers had not the Customes till others said they would give no more, and they had no reason to thank the *Chancellour*, because they gave more than others : And I declare upon my Life I know no reward given him.

Sir Tho. Litt. It appears by the Farmers Confession, that they had it 50000 l. under, besides time of Payment, which was 30000 l. more.

Mr. Seym. You are at liberty to receive Objections to the Articles, but tho' others had more, they were told they should not have

have it, and had about 1000 l. each given them to bid no more.

Sixth, Seventh, Eight and Ninth Articles Read and Voted.

The Tenth.

Mr. *Vaugh.* This is an Article of an high Nature, *Dunkirk* was then as much a Part of His Majesty's Dominions as *Ireland*, and if the Sale of it be nothing, I know not what you would think of it if *England* should be Sold, you lately debated whether on the first Article he should be accused of Treason, and found by the Statute of 25 *Ed. 3.* he could not, tho' it was absolute Treason at Common-Law, and its reported abroad that I said that the Right of the Parliament in declaring Treason is taken away, which I did not, for there are Treasons not mentioned in that Statute. Therefore it provided that the Judges should not upon any one Treason proceed to Judge, untill declared before the King and Parliament, and what is signified by it? If we think before the King, Lords, and Commons, that is impossible, for how can the Commons possibly declare before the King and Lords, nor was that the Case, but this, that *there* is the ultimate Power of determining what the Law is in a doubtful Case. In Writs of Error let them pass from Court

to

to Court, at last they come to the Lords, 24 *Ed. 3.* If the Judges cannot resolve what the Law is, it is to be brought thither, that is, where it is questionable, but that is not in the *House of Commons*, any more than in a Writ of Error: How then is the Case here? If a Question be whether a Thing is Treason, or not, it shall be Resolved where the Law useth to Resolve, that is, before the King in Parliament, that is in the Lords *House*. Had the Words of the Act been these, there shall be no Proceeding untill Resolved by the King in the Lords *House*, and Suppose that Clause taken away, That Treason shall not be Resolved, but suppose it shall not be declared otherwise, doth it follow it is taken away? No, if you charge Treason which is not within the Statute, it is another Thing, but I said not, there is no Treason at Common-Law.

Mr. *Sollicitor*, There was a great Mischief in the declaring Treason by Parliaments; for *Mortimer* was made a Traitor for incroaching upon Royal Power, which every Man, who incroacheth upon any Power, doth. Hence the *Commons* Petition'd the King to explain what incroaching upon Royal Power was, and when no Answer could be gotten to it, 25. *Ed. 3.* They Petition'd it might be declared certainly, and so Treasons were enumerated, and if the Judges be in doubt, it is provided that
the

the King and Parliament shall first declare it.

Declaration in Parliament, is a Declaration before the King, Lords, and Commons. Would our Ancestors leave what is to be Resolved Treason to the Lords, and themselves have no share in it? And *Talbots* being declared Treason by the Lords is said to be no Treason by Judge *Cook*, because the *Commons* had no hand in it, there is no Treason in Common-Law, because there can be no Treason where there is no way to Judge it, which is not at Common-Law.

Mr. Vaugh. When the Law is made uncertain the Lords must declare it, it appears there were Treasons at Common-Law not mention'd 25 *Ed.* 3. It is one Thing for a Matter to be Treason before, and the Parliament to declare it; another, for the Parliament to make a Thing Treason which was not.

Sir Will. Lewis. I desire to be Resolved whether *Dunkirk* was annexed to *England*, because a Bill to that end was carryed, but not Passed.

Mr. Waller. To shew that *Dunkirk* was annexed to *England*, consider we were Passing a Bill for 1200000*l.* But when we were making a Preamble to the Bill, we
were

were to seek for Reasons for giving the Money, seeing we had no War, some said to keep *Dunkirk*, but were told we should take heed of looking upon it as annexed unto the Crown; but it was replied, *Dunkirk* was look'd upon as a Frontier Town, and accordingly noted in the Bill. Therefore the Sale of it Treason.

Mr. *Coven.* Had it been part of the Crown of *England*, what needed a Bill to make it so?

Mr. *Pr--n.* It cannot be Treason, because Sold by the King's consent.

Mr. *Vaugh.* If the King agreed to it, doth it follow, that he, who adviseth the King to a Thing destructive to his Kingdom and King, is not a Traitor? If any part of the King's Dominions may be alienated, especially when a Parliament is Sitting, for they concurring, it may be alienated, by the same Reason the King may alienate *Ireland* or *England* too without the Parliament; For by what Act of Parliament doth the King hold *Ireland* or *England*? It is by Acquisition; I say not *Tangier*, for that was part of his *Portion*, and is his own: But *Dunkirk* would have been the Kingdoms if not thus disposed of, and tho' it might have been alienated with the Parliament, it could no more without, than *England* or *Ireland*.

Mr.

Mr. *Ed. Hart*. The Act of Parliament for annexing was not This Parliaments, but of the Convention, and came in thus; the King was pleased to tell me, that the *Spanish* Ambassadour might press him to part with it, which he had no mind to do; therefore he would have a Bill to annex it to the Crown, which shews it was the King's Will to have it annexed, accordingly this Parliament passed it, and *Dunkirk* might have been as useful as *Calice*.

At length this Article was passed by, without determining whether Treason or not.

Eleventh, Twelfth, Thirteenth and Fourteenth Articles read and Voted.

Fifteenth Article read,

Lord *Vaugh*. I brought in this Article. His Betraying the King's Councils was to the *French* King during the War, and that in the secrecy of State, which was the occasion of the late Mischiefs.

Sir *Tho. Osb*. That is direct adhering to the King's Enemies, and so it is Treason.

Mr. *Sollicit*. This must be Treason if you have any inducement to believe it.

Sir

Sir Rob. How. I have heard it from an Eye-Witness who told it me, and added that we are neither to be trusted nor dealt with, who were so betrayed.

Serj. Mayn. Betraying the King's Council to his Enemies is, doubtless, Treason, Corresponding is another Thing, Betraying must be without the King's Knowledge, otherwise it is but delivering the King's Words to his Enemies?

Sir John Brampe. Did this Information come from a Subject, or from one of the King's Enemies?

Sir Rob. How. I would not have brought you Information from one of the King's Enemies, nor did I ever converse with them during the War.

Coll. Birch. We cannot accuse of Treason, except it be said, Betraying the King's Council, or Corresponding with his Enemies.

Mr. Vaugh. You have declared that you have had inducement to Impeach, and ought to put the Question, whether on this Article he shall be Impeached of Treason.

Mr.

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Mr. *Sollicit.* To betray the King's Council, taken generally, is not Treason, for it may be to the King's Friends, but to his Enemies it is, If the Article be so.

Lord *Vaugh.* Let it be put betraying His Majesty's secret Councils to his Enemies during the War.

Then the Question was put whether these New Words delivered by the said Lord *Vaugh.* should be added.

Carried in the Affirmative.

Sir *John Holl.* Was this Information given by an Enemy or by a Subject?

Mr. *Vaugh.* It must come from a Foreigner, or you could not know it, may not the King have from a Foreigner a discovery of Treason against him; The end of questioning it must be to know the Man, for it might as well be asked whether his Beard be red or black.

Sir *Tho. M--rs.* The words are discovered not betrayed, and discovering may be with the King's consent.

Lord *Vaugh.* Add the word Betraying, for so I meant it.

Serj.

Serj. Mayn. They who give the Information say not they had it from more than one Witness, which *Stat. Ed. 6.* requires, and only one of them Names the Earl of *Clarendon.*

Mr. Seym. This exception is proper to be made before the Judges.

Then the Question was put.

Whether to Impeach of Treason on this Article.

Yeas, 161.

Noes, 89.

250.

Sir Tho. Litt. That an Impeachment of Treason and other Crimes and Misdemeanours be carryed up to the Lords against him by *Mr. Seym.*

Serj. Mayn. For Misdemeanour he may have Council, not for Treason: Therefore so distinguish the Charge, that he may have Council,

Resolved, *That a Charge be carryed up.*

Resolved, *That the Speaker and the whole House carry it.*

November, 12.

It being considered that if the Speaker go up with the Charge, some dispute might arise about carrying the Mace and otherwise.

It was *Resolved*, That Mr. *Seym.* carry it.

Accordingly he went ; where at the Bar of the Lords House, the Lord-keeper *Bridgeman* being come to the Bar to meet him, he delivered himself to this purpose.

My Lords,

THE Commons Assembled in Parliament, having been informed of several Traiterous Practices, and other high Crimes and Misdemeanours committed by Edward Earl of Clarendon a Member of this Honourable House, have Comanded me to Impeach him, and I do accordingly Impeach him of High-Treason and other Crimes and Misdemeanours in the Name of the said Commons, and of all the Commons of England: And they have farther Comanded me to desire your Lordships to Sequester him from Parliament, and to Commit him to safe Custody, and in convenient time they will exhibit Articles against him.

November, 15.

The Lords sent down to desire a Conference in the Painted Chamber.

At which the Earl of *Oxford* delivered a Paper in writing (without any Debate) the Contents whereof were to this effect.

The

The Lords have not Committed the Earl of *Clarendon*, because the Accusation is only of Treason in general, without charging any thing in particular.

Mr. Garra. I had rather the House should loose the Punishment of this Man, (tho' a great Offender) then that this House should loose its priviledge; for if this House may at no time Impeach a Lord without giving in particular Articles, it may fall out to be at a time (as in the Duke of *B*—*s* Case) where a great Man by his Interest with the King procured the Dissolution of the Parliament, and then the Accusation falls.

Mr Vaugh. Either you can justify your Proceedings, so as to satisfy the Lords what you have done, or you cannot; you must name a Committee as well to consider what you are to do if your Reasons satisfy not, as to draw those Reasons.

Mr Solicitor, Without doubt this House was not mistaken in demanding that the Party accused for Treason should be committed, That is, that Treason is worthy of Commitment; and you can but find Presidents that Persons have been accused of Treason, and thereupon have been committed: But the Case is this, Treason is an Offence, for which Bail cannot be taken;

the Lords tell you not they will, or will not Commit : But it is true, Persons have been Committed for Treason, and Persons accused of Treason Judges may Commit, or not.

Consider this Law. Let the Crime be what it will, an Imprisoning till the Charge it given is but an Imprisoning to security, not to Punishment ; otherwise the Law is not Just, and if the Judges of the *Kings-Bench* have a Judgment of Discretion, whether to Commit or not ; can we wonder that the Lords have not Imprisoned, till they know the Article, when they have Judgments of Discretion tho' they knew it ? You may find Presidents, but it is not an Argument it must always be so : But as the Judges have a Latitude much more than the Lords, the Impeachment from the Commons of *England* is properly the King's Suit, for there is no Treason but against him, and if the Judges may Bail in that Case, may not the Lords. But you are not told he shall be Bailed, but they desire to know what his Crime is, and then you shall know their Answer, the Resolution seems reasonable, having gone no farther, I cannot except against it.

Sir *Tho. Litt.* The *Long-Parliament* had some good Presidents which we are not to cast away least we smart for it.

Resolved, *To Resume the Debate to Morrow.*
Nov.

Nov. 16. Mr. *Vaugh.* The Lords do not say Commitments should follow because Treason isailable by the *Kings-Bench*, its true, the *Kings-Bench* Bails for Treason, but how? If Persons be brought thither for Treason directly there is no Bail, but when a Commitment is by the Council Table for suspicion of Treason, then if the Matter fall not be to what was expected they give notice to take Bail, else the great Article of the Great Charter, Mameley that Justice should not be delay'd nor denied, would be to no purpose; and in such a Case a Man may be in Prison for ever. On the other side, what is the Case of Committing for Treason? when a Person is Committed by the Council-Table, they say, thay do no more but by special Command of the King, and that is the ground of his Committing, and were not this so, what would follow? Intelligence would be given of a Treason discovered, wherein many might be concerned, and if they who Commit should Commit with the Treason, all the Complices would escape, and therefore sometime they make it Treason General. Then for the Case, before you have gone up with a Charge of Treason generally, which is to the Lords a Warrant sufficient for Commitment, say they, we will know the Particulars; then will not the same inconveniencies follow, if other Persons be concerned, and so the danger of all exposed upon the nicety? E 3 16

If a Business comes before this House, which concerns others, and may prove Treason, if we go to the Lords (for we have not Jurisdiction except in Case of our Priviledges) but yet are not ready to bring up Particulars, and desire the Lords to apprehend such Persons, would it be reasonable for them to refuse it, there being no inconvenience like to follow the doing it, much the not doing it? I say not to Commit them, and we not prosecute, for that is delay of Justice.

Qu. But why do the Lords refuse?

Ans. Tho' I have great respect to the Lords, yet to clear something in point of Priviledge, the Lords have the same Priviledge with us in point of Speech, their Members, &c. as they are essential to pass Laws; but that great Priviledge which they often assume as Peers, is as the King is there present in the highest Court: How then will it fall out in respect of this Priviledge? If the King be there, there be many Things which the Lords as Peers cannot pretend to; for the King hath often sate there not only in passing Bills, but in Judgment. Had this Charge then come before the King there, it had been reason if the King should have said, *I desire to know what this Treason is*, we must then have told it, because he, whom it concerned, required it, or if we desire Commitment, he, who could Release or Pardon him, might say,

say, *let him be Bailed.* The Lords indeed retain this Priviledge, but it is in the King's Right, not as Peers.

Now we have carryed a Charge, if the Lords Bail him, I know not what would follow, for no Example can be given of it, and I think they will not do it, if the King do not direct it.

On the other side, I would be glad we might be no more troubled than is necessary, because others are listening what we do, and think there is nothing in the Case: Therefore I am not for delay, but satisfying others that what we have done is not barely for Imprisoning the Earl of *Clarendon*, but for Justice; and if you go this way, give the Lords the Reasons why we sent the Charge as we did, and yet keep up their Priviledges, and declare so to them.

But than we must go up with more than that Head, on which we Resolved to Impeach of Treason; for your Articles must be so formed as to make it a Charge fit to be Answer'd for Time and Place, and that Article hath something of that which must be penned so as to make it more certain; for the Article goes but thus; *That there was Discovery and Betraying of the King's Councils to his Enemies*, and if you leave it there, those who scruple doing any Thing because particular Treason is not mentioned, will say, *you say he hath discovered and betrayed Councils to Enemies*, but as the

trust you not what is Treason; but we will know it; so we know not whom you mean by Enemies; for we may think them not so. Therefore appoint a Committee to form Articles.

Mr. Solicit. It is a great mistake to say, That the Power of the *Kings-Bench* to take Bail for Treason is no other but what is asserted, as if the Judges there had only Power from *Magna Charta*. When a Man is Committed upon suspicion of Treason, and no Prosecution follows, and the Party bringing his *Habeas Corpus*, the Bench Bails him because he should not lie there eternally; it is not to be said the Judges Bail for Treasons, seeing no Crime is produced: For when a Man hath been accused of Treason for Coining false Money and brought to the Bar, the Judges have Bailed him not because they ought, but from the discretionary Power wherewith the Law trusts them; they may Bail if they will, for no other Judicature, but they, can Bail in that Case: for seeing Imprisonment before Trial is only that the Prisoner may be forthcoming, if they see there is no danger of escaping they may take Bail, for he is a Prisoner when Bailed, and the Bail is his Keeper; but there are few Cases of this kind wherein they will Bail; they have a fundamental Power to do it, placed in them to preserve the Rights of the Crown,

Crown, and the Lords will not think themselves less trusted with the Rights of the Crown than the *Kings-Bench*. Yet tho' the Lords may Bail, they will not exercise their discretion when there is a probable Truth in the Impeachment; shall we then refuse this Intimation from the Lords? Who saying, because they have not a particular Article of Treason do not secure, seem to imply, that if they had they would, tho' they might refuse. The Right of Bailing comes not from an imaginary apprehension of the King's sitting there, tho' some Kings have sat there in Judicature, but from their Inherent Authority of being trusted with the Right of the Crown: Let us do then what becomes us, and not let the Impeachment miscarry upon a misunderstanding but draw up the Article. But how is it possible to draw it as an Article which you expect he should be imprisoned upon? For your Impeachment is in the Nature of an Indictment, and must contain so much of Certainty as to put him to plead, that so he may not Demur.

How may it then be Circumstantiated, so as that he may put to plead? if you do it according to 25 *Ed*, 3. (for discovering the Thing's Secrets to his Enemies is within that Statute.) The first part of the Article is not pleadable; for we must shew how he adhered to the King's Enemies, and we must add what the Council was that he betrayed,

else

else he will deny to plead, and say, I can avoid it: Therefore consider what kind of certainty this Article must have to make him plead, for the other Articles, its enough to say them without proving Time or Place, if the Facts were after the Act of *Ob-
lition*; but in Treason, the Matter must appear in the Indictment, for he hath liberty not only to plead not Guilty, but to avoid it: Therefore prepare the Article accordingly.

Mr. *Vaugh.* What is Moved is to put you upon an impossible Business, for an Article presented from the Parliament needs not that Certainty, as if it were to be tried at the *Kings-Bench*.

Sir *Tho. Litt.* It is not for the Honour of this *House* to recede so easily from such a Privilege, for, besides the Earl of *Strasford's* Case, we have express Presidents for, but none against us. We have heard that we must have no more Impeachments, because they are dangerous and tend to Rebellion. Consider the Arch-Bishop of *Canterbury's* Case, *Finch*, *Ratcliff*, and others in the *Long Parliament*, and we should not so easily part with them. *William Delapool* being commonly reported to be no true Man, (which is a less Charge than Treason) desired he might acquit himself, and the Lords required no special Matter before they imprison'd him,

him, and afterward he was accused more Specially.

Sir *Rob. Ark.* In the Case of *Anselm* Archbishop of *Cant.* the Commons Accused him but the Lords did not Commit him, and gave no other Reason for it, but that he was a great Man, and yet afterwards he was Condemned as a Traitor, tho' the King reduced his Punishment only to be Banishment. Tho' a Priviledge is much spoken of, yet I shall never be fond of any Priviledge which shall Intrench upon my Liberty as a Subject.

Mr. *Vaugh.* I hear it Objected, That as you Charge a Lord generally, so may the Lords a Commoner, but that cannot be; for the Lords cannot cause a Commoner to be Committed tho' for Treason, without your consent: Therefore put a Question, whether a Committee shall be named to draw up Reasons to justify what you have done.

Resolved, *That the Question shall be put.*

Resolved, *That a Committee shall draw Reasons.*

November, 18.

The Committee brought in their Reasons.

First,

First, What can or ought to be done by either *House* of Parliament is best known by the Customes and Proceeding of Parliament in former times ; And it doth appear by Example, that by the Course of Parliaments the Lords have Committed such Persons, as have been generally Charged by the *House Commons* for High Treason to safe Custody, tho' the particular Treason hath not been specified at the time of such Charge.

Second. That a Commitment for High Treason in general, is a Legal Commitment, and if the Party so Committed bring his *Habeas Corpus*, and the Cause of his Commitment thereupon be returned for High Treason generally, he may lawfully be remanded to prison by the Judges upon that Return.

Third. If before securing the Person the special matter of the Treason should be Alledged, it would be a ready course that all Complices in the Treason might make their Escape, or quicken the execution of the Treason intended, to secure themselves the better there.

Fourth. If the *House* of *Peers* should require the particular Treason to be Assigned before the Party Charged be secured, they
leave

leave the Commons uncertain and doubtful (and that from time to time) how particular they must make their Charge to their Lordships satisfaction, before the Offenders be put under any restraint.

Fifth, The Commons conceive, that if they should desire the Lords to secure a Stranger, or Native Commoner, upon suspicion of Treason which the Commons had of him, and which was by them under Examination to be Evidenced to their Lordships in due time ; their Lordships in Justice for the safety of the King and People would secure such Person or Persons, upon the desire of the Commons, and in such Case there would be no difference between a Lord and a Commoner so desired to be secured.

Sixth, The Proceedings of inferior Courts, between the King and the Subject, or Subject and Subject, and the discretion of Judges in such Courts is bounded and limited by the discretion of the Parliament which trust them ; and 'tis not left to the discretion of the Judges in ordinary Jurisdiction to give the King, or take from him, inconvenient Power for the Subject, nor to dispence the Law partially between Subject and Subject for Malice or Affection ; but the discretion of the Parliament, which is the whole Publick, comprehending the King, Lords and Commons (for the Kings presence

sence is supposed to be in the *Lords House*) is, and ought to be unconfined for the safety and preservation of the whole, which is it self.

It cannot be malicious to a part of it self, nor affect more Power than already it hath, which is absolute over it self and part, and may therefore do for preservation of it self whatsoever is not repugnant to natural Justice.

Mr. *Prynn* I like not the first Reason, because it cannot be called a Custom where only one Parliament hath done it.

Mr. *Swinf.* The great strength lies upon this first Reason, and is like to be a President ; for exact Presidents I find none, except that of *Michael Delapool*, and in the Long Parliament : But consider the reason why there was no express President before, and what was the Custom of Parliaments before. The Parliament was wont to proceed formerly by Bill, and thus that proceeding makes against the Lords now, and for committing the Party accused ; for then the proceedings upon Treason were by Common-Law, and because the Judges could not proceed, therefore the Parliament went by Bill, and it cannot be supposed that the Parties were at liberty all that while.

Second, Third, Fourth and Fifth Reasons Voted, Sixth Read.

Mr.

Mr. *Solicit.* I am against this Reason, not as a Reason, but unnecessary; for if the former Reasons satisfy not, this will not, because it supposeth things not in question.

Our Debate must at last end in this Question, betwixt Priviledge of Parliament and former proceedings; and there being no priviledge in Case of Treason, Why should not former proceedings Sway? Except we call that Treason which is not, for otherwise no Priviledge will help.

Therefore add this to your Reason, That there is no priviledge for Treason, and the Lords ought not to think that the Commons will call that Treason which is not, or if they do, the Lords may by a speedy Trial determine it.

Resolved, That a Conference be desired with the Lords, and the Reasons carryed up.

November, 21.

The Lords sent down to desire a Conference about the Subject matter of the last Conference. But the Commons doubting that if they should consent to it, the Lords might afterwards refuse a Free Conference, because the business in dispute concerns Judicature, which belongs to the Lords, and so the Impeachment generally falls.

Resol-

Resolved, To send an Answer by Messengers of their own, and accordingly did, with Order to acquaint the Lords how far they had proceeded, and they expected they should rather have desired a free Conference.

November, 23.

The Debate about the freedom of Speech in Parliament was resumed.

And the Report Read of Proceedings about Sir John Elliot, Mr. Holles, &c. 5 Car. 1.

Mr. Solic. If you are satisfied that the Judgment passed upon them was Illegal, two ways you have to be safe; by taking notice of that Judgment, giving your Opinion upon it, and carrying it up to the Lords, that Judgment will be utterly Damned; else you may proceed by Act, but consider then the Consequence: For if you go by Act, you bound the liberty of Speech, unless in penning it you prevent it, but an unknown limitation is better than bounding, for an Act it self is subject to exposition, but your Vote, and the Lords Concurrence is not.

Mr. Vaugh. It is not safe for you to Circumscribe Priviledges, therefore that must be done which may take away what destroys them.

The

The Laws and Rights of this Kingdom are Rights by Common-Law, or Act of Parliament; what is an Act of Parliament may be Repealed by Parliament, what is Common-Law may be altered by Parliament, and whatever is both, may be altered by a *New Law*; and how is it possible to do one, or the other without liberty to speak about it? And how can there be any inconvenience about freedom of Speech, about any Thing which cannot be a Law without passing King, Lords, and Commons.

Then it being moved to put the Question for confirming that Report.

And it being Replied that some passages in that Business, *viz.* about keeping the *Speaker* in the Chair were not warrantable, and so not to be joined in the Question with the rest.

Mr. *Vaugh.* That Business which is so much talked of, and Condemned, I shall state to you.

The *House* is to adjourn it self, tho' sometimes the King advised them to Adjourn themselves (as then he did) but the Adjournment is always made by a Question, and without it the *Speaker* cannot leave the Chair.

The *Speaker* acquainting the *House* then with the King's Message, Sir *John Elliot* stood up to speak, but the *Speaker* would

not hear him, but was going to leave the Chair, whereupon some said, if you go out without a Question the Parliament is Dissolved, upon which he was leaving the Chair; some kept him, and told him, if this be a *House*, you as *Speaker* have no place in it but the Chair, and this was all the Irregularity in that Business so much talk'd of.

Resolved. That the Judgment given against Sir John Elliot, &c. 5 Car. was an illegal Judgment, and against the Freedom and Privilege of Parliaments.

The Lords sent for a present Conference, after which Report was made that the Lords had Voted, the *Commons* denying them a Conference lately was contrary to the Course of Parliamentary Proceedings, and gave Reasons why it was not yet time for a free Conference.

November, 25.

After Debate whereof, it was *Resolved* to grant them that the *Commons* agreed to the Conference formerly desired.

At which the Lords declared that they had considered of the Presidents and Reasons formerly sent them by the *Commons*, but were not satisfied to secure the Earl of *Clarendon*, or to Sequester him from Parliament untill some special Treason be Assigned.

Novem.

Novem. 18. The *Commons* sent to the *Lords* to desire a free Conference upon the Matter of the last Conference.

To which the *Lords* Concurring, Mr. *Vaugh.* Sir *Rob. How.* Sir *Tho. Litt.* and others were appointed to manage it, who went up immediately to that end.

Mr. *Vaugh.* Made Report of the Conference with the *Lords* yesterday to the purpose following.

The *Lords* told us, That no President can be against the Law.

We Answer'd.

If that can be made good, we shall press Presidents no more, but what they most stood upon was the *Petition of Rights*, where 'tis provided that none shall be Committed without special Cause, whereby the Party may Answer according to the Law, thence they infer that our Proceedings are against Law; because a general Charge is against the *Petition of Right*.

Commons. The Case of the *Petition of Right*, rightly Stated, will clear this, which was This: Some Persons were Committed by no other Warrant, but the King's special Command, they bring their *Habeas Corpus* to the *Kings-Bench* to know the Cause:

This Cause was returned by the Judges, that they could not Bail a Man, when so Committed, because they knew not the Cause, nor had any way to bring him to his Tryal.

Then the *Petition of Right* provides That the Cause should be returned, whereby the Crime might appear, and that before and after the *Petition of Right* to this Day, if upon bringing a *Habeas Corpus*, it be returned that the Party is Imprisoned for Treason, the Judges ought to Remand, unless there be some special Cause to make them take Bail. So that the *Petition of Right* was against them, for they say, a Man ought not to be Imprisoned upon a general Charge, because 'tis against the *Petition of Right*: We say it is not against the *Petition of Right*, because the Judge may Remand the Party, if there be no special Cause.

Then the Lords said, *That the Reason why the Judges Remanded in that Case was, because the Party Committed knew it was for Treason: Therefore they Re-committed.*

We owned it, because it was the Rule for the Judges to proceed by, but that was no Rule for Proceedings of Parliament, for as a Magistrate Commits for Treason, and is supposed to be acquainted with it; so also is he with the probability upon the Proof: But the Lords insist not now upon that

that, but specific Treason, and if the Course of Parliaments so much varied in such Cases, that was no concluding Proof why they should have special Treason. And for the other part,

That upon the Return, there should be a Cause Returned, that so the Party might Answer; for when a Return is made, if the Cause be such as that the Party ought not to be Imprisoned, the Judges free him, otherwise they leave him to come to his Tryal.

Then to the President about the Earl of *Strafford*, they *Replied*, That it was made in bad times. And we *Answered*, That as good Laws were made before, in, and after that time as any other; and if the Lords then might make such Laws, we could not see, why it should be a good time to make Laws, and no good time to Administer to Persons the Laws already made.

Farther, to their *Objection*, that in the time whence those Presidents were brought, there was a Face of War. We *Answered*, That could not alter the Case, for the Law calls no time a time of War, whilst the Courts of Justice have freedom, as they had when *Strafford*, *Finch*, *Canterbury* and *Ratcliff* were Impeached, and it was strange that in the Parliament-House there should

be such a Consternation as to make their Proceedings invalid, when in other Courts there were none: Besides, in *Holland* of many Years there was a constant Scene for War, and can we imagine that there was not Justice done at that time.

Then they pressed Presidents against ours, One 14 *Ed. 2.* against the *Spencers*, where a great Man moved the King to Commit one of them, and the King Answered, *it could not be unless Cause was shewed.* We Replied, This was a President like that, a Man was Committed, because he was Committed, for there was no Allegation of Treason.

Second President was 38 *Hen. 8.* against Lord *Stanhope*, the *Commons* moved the King to Imprison him, and the King Answered *he would consider of it.* We Answered, That was no denial, but a thing usual with the King, and that Motion was to the King himself, which differs from this Case, for that was not alledged to be Treason: Besides, had it been Treason, it was against the King himself, and being an Offence against himself, he might (if he would) not Imprison, because he may discharge a Man, or pardon him, tho' for Treason; but this Case is not so, because the Lords Justice is but Ministred to the King.

21 R.2. *Arundell* Arch-Bishop of *Canterbury*, who as they said was Impeached of Treason, but not Committed.

Answer. The Case was this, There was a Commission Issued out by Ric. 2. That that Bishop and others should regulate what was amiss by evil Government, and the King was offended at the granting of it, and at *Nottingham* sent for the Judges, and charged them upon their Allegiance to give true Answer to what Questions he should ask them, and the first Question was, *Whether that Commission so granted, was not invading his Prerogative?* They Answered, *Yes*, Then he asked *how they ought to be punished who procured it?* They Answered, *as Traitors*. In the 21 the Bishop is charged by the *Commons*, and the Treason alledged is, That he had procured himself to be put into the Commission.

This being the Case, we said, That if a Fact be called Treason, which afterwards appears to be none, there could be no Commitment, for if a Man call another Mans coming into his Ground Treason, it falls of it self; therefore the Bishop was not Committed.

The Lords said farther, That all those Articles were declared to be Treason, which before could not possibly be Treason

son to Commit a Man, because the Nature of them must be Treason at Common-Law, and till these Treasons were declared, which was not till 21 *Ed.* 3. they were not Treason so as to Imprison, or Try any Man for them.

We *Reply'd*, All that Parliament was Repealed, yet the President was the more Authentic. But I think that Lord (it was the Earl of *B——*) understood not what he said, at least I did not.

Then about the Earl of *Strafford's* President, the Lords said, that the very Impeachment was taken away by the Act of this Parliament, because the Impeachment is recited in it. Namely, Whereas the Earl of *Strafford* was Impeached &c. But every Clause in that Act of Attainder is taken away now, therefore the Impeachment; and you cannot make use of any part of it.

We *Replyed*, it's true, the Act of Attainder is taken away, but the very Act of Repeal doth recite that very Clause (whereas *Thomas* Earl of *Strafford* was Impeached &c.) and the Act cannot take away any thing which strengthens its own Supposition.

Then

Then the Lords said, That they should be willing to comply with the *Commons*, but that they must be tender of their own Judicial Proceedings.

Commons. Its true they ought, and we supposed that the Lords might be jealous that we should Intrench on their Power, but the *Commons* were so far from that, that they thought the Judicial Power better lodg'd with them then in the *Commons* themselves could be; but we would open the *Objection*.

Their Lordships being the Judges in this Case might think, that for the *Commons* to take upon them to know what was Treason, would be an assuming to themselves what was only proper to the Lords, and that it was so now in Charging the Earl of *Clarendon* generally.

Lords. The *Objection* is right.

Commons. For our knowing Treason, we have many among us, who are Justices of Peace, trulted by Law to know and Commit, (and if the Parliament be not Sitting) even to Commit a Peer himself for Treason, and the knowing what is Treason is so far from being improper to the *House of Commons*, That every Man in the Nation is bound to know it; for was it
ever

ever known, that Ignorance of the Law could ever excuse a Man from breaking the Law ? Laws are made to be known by Subjects, especially those which concern the King ; and unless they could find a Reason, why the Parliament Embodied should be more ignorant than particular Persons, the present Case must be clear. That the Jealousie of the Lords arose from a Fallacy, thus, The Lords have Judicial Power concerning Treason, and must of necessity know in ; the Common have no Judicial Power over it, therefore cannot know it ; that is, because the Commons know what Law is, therefore they have Judicial Power over Law. To this was not any thing *Replied*.

Farther, We said that because they insisted upon to specify Treason, because by Committing upon a general, they might wrong the Party by Committing him without Cause, and because they themselves were not informed in their Consciences what they did : They would do well to consider the many Inconveniencies which might follow, if the Charge of Treason was not general, but particular ; and suppose it was Special, their Lordships would know no more by it. For suppose a Man Impeached for Counterfeiting the Great Seal, which is express Treason, and he may be Impeached for it, yet neither their Lordships
nor

nor the Party could have any advantage by that Specification, because there might be as many Questions what is Counterfeiting the Great Seal, or what is Treason.

For Instance. One Leake a Clerk in Chancery, intending to Forge a Patent, puts together two pieces of Parchment, and had fitted them, and put them together with Mouth-Glew, that they appear'd as one: Then a Grant was written upon the outmost, and a Seal affix'd, so that the Great Seal is put to a true Thing, then he cuts off the edges of the Parchment, so as to sever them, takes off the written One, and leaves the Seal on the Blank, then Forgeth the Grant and makes use of it. This was questioned before the Judges, whether 'twas Treason or not, that is, whether Counterfeiting the Great Seal or not? If it were, it was Treason, otherwise not. They *Resolved*, it was not Counterfeiting the Great Seal, and so not, but Misprison. And if it had been Treason, they *Resolved*, that an Indictment had been enough to Impeach him. Then suppose you have such an Impeachment before you for Counterfeiting the Great Seal, you have Special Treason, and Imprison him; but when it is brought to Question, it appears not to be Treason, therefore he is wrong Imprisoned: And if your Lordships will examine what knowledg you have of this Fact, you have

have no more then if it had been a general Treason.

Lords. There is a Case put there, as we are content to take a Special Treason, but expect not the Proof as there it was.

Commons. If it were a Case put, so is your Lordships Reply, for it was put *ex Concesso*, because you agreed that if the Treason was Special, the Party was to be Committed, and this Case was to show their Lordships, they were in no better Case then, than if the Treason were general.

But the Lords still pressing that the Impeachment it self of the Earl of *Strafford*, was Repeal'd in the Act about him.

Commons. We Reply'd one part of the Act ought to be severed from the other, and that which is without exception shall stand, tho' the other be taken away : For, suppose a Man Prosecutes in a Court of Justice, for what he apprehends to be his right, and yet the Cause goes against him, and he hath no effect of his Suit, afterward the Party (being an evil minded Man, and thinking to reach his Ends) Forgeth a Deed, or Suborns Witness's, and then begins a Suit in some other Court, and by those ways attains his Ends. Then a Bill comes before this Parliament to Reverse the

the Judgment, reciting that such a Person hath been a Suborner of Witnesses, &c. so, and so, and therefore the Judgment is made void; certainly tho' this Person is named to be an evil minded Person, yet this lays no blemish on his first Proceedings. So that it appears by the Act, that the Proceedings against the Earl of *Strafford* were legal at first, if those afterwards, when the times became tumultuous, were not, it is not to be applyed to what was well done and legal: Then we told them that we had pressed them with four Presidents, and to three of them nothing was Replied.

Lords. They Answered the Reason why my Lord *Finch* was Committed, was because of his Flight.

Commons. He was fled before the Impeachment, but it was Ordered, That he should be Committed when found.

Then we told them, That we must Report to them, that be the Treason what it would, we could not go to the Lords to have it punished without that disadvantage, which the Publishing the Treason beforehand would expose us to by making of Witnesses, escaping of Parties, and the like; then bad them consider, whether if we should lay before them a Treason in every Thing circumstanced as *Gunn-Powder Treason*

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Treason, they would not Imprison the Party till the whole Matter was opened.

Lords. They Answered to hear that Case put, for in Matter of State, other Courses are to be taken, and they could see no Inconveniency in Publishing that to the Lords, which must be Published before 400 in the *House of Commons*.

Commons. The Commons may proceed with what secrecie or opennesse they please, and the Lords are not to take Notice of their Proceedings, whether open or secret.

Farther, That by a Matter of State must be understood, when a Parliament is not Sitting, and we know not whether to resort, but when a Parliament is particularly called to prevent the Mischiefs threatening the Kingdom, if that be not capable of Remediing, no other Council could, or we are not bound to resort to that, we are excluded from that to which we ought to resort.

Lords. That the Lords had us take heed of the Liberty of the Subjects, to which they are now said to have Regard, bidding us consider the Bishop of *Canterbury's* long Imprisonment, without knowing the Cause, and they must satisfy their Consciences,

left

lest they should Commit for Treason; and it not prov'd so.

Commons. It appears not that the Bishop of *Exeterbury* should have lain less time, had the Impeachment been Special; and for the Liberty of the Subject, we know not how a Subject should have more Liberty by Special Matter than General; Special being but adding a formal Title, and the Subject goes to Prison, as well for the one as the other.

For their Consciences. Suppose a Person accused generally, they are then to know whether it be Treason, and is not it as much that they Commit an Innocent Person so? as if the matter was Special.

December, 2.

The Lords sent down a Message to the Commons by two Judges, to this effect, *That upon the Report made to them of the last free Conference, they are not satisfy'd to Commit or Sequester from Parliament the Earl of Clarendon without the particular Treason be mentioned or assign'd; who being withdrwn.*

Lord Tarring. (General M——cks Son) Moved not to part with any Priviledges of the Commons of England; but adhere to the General Impeachment.

Sir Rob.

Sir Rob, How The Matter before us, is of as great concernment as ever came before us; if there should be Malice supposed in a Nation against it self, it might be exercised by giving a particular Charge, as well as a General; many of the Lords are convinced by the Reasons we gave, and Concur, thinking our Presidents good, and have entred their Protestation in the Lords House, asserting the Rights of the *Commons of England* to Impeach generally; So that (excepting the Spiritual Lords) I think I may say the Major part of the Lords are for us; and should we give up this, we may be wrested out of all Right, and the Commons have no way to proceed to an Impeachment, but some Men to be so great, as not to be fairly reach'd. Therefore adhere.

Mr. Wall. The Lords are a noble Estate, but whatever the Matter is, they have of late some Advice given them, which makes them proceed as they never did yet, for scarce any Thing happens betwixt us, but they incroach upon us. The *Militia* is now as burthenfome to the Fifty Pound Man in the Country, almost as all other Taxes, and the Lords have gotten this Advantage on us, that they touch not the Burthen of it with their Finger: So in time of the Plague, the Commons must be shut up, but not they, insomuch that a good Act provided

vided to that purpose passed not ; we Impeach'd the Lord *Mordant*, and could not bring him to the Bar, (tho' formerly I have known an *Earl* and a *Lord* brought thither) you desired a free Conference about it, but could not obtain one to this Day. *Rome* was at first modest, and only medled with *Spirituals*, but afterwards concerned themselves so much with other Matters, that every Thing almost was made to be in *Ordine ad Spiritualia*; and many Kingdoms thereupon break from them. The Lords now insist upon one Thing, because they say 'tis in order to their Judicature, perhaps hereafter they will tell us we must come to them on our Knees, because it is in order to their Judgment. Consider therefore whether there be any hope of giving them satisfaction ; then, whether you will adhere, and what you will do afterwards ; for the present my Motion is to adhere.

Mr. *Vaugh*. It is truly said, the Business before you seems to be as great as hath been in Parliament, many of the Consequences being invisable ; therefore before you *Resolve* what to do take the whole Matter before you.

The difference between the Lords and us, is upon a general Impeachment of Treason ; the Lords after a Free Conference say, they will not Commit unless Special Treason

be mentioned or assign'd, those whom you employed to Manage the Conference were very unwilling to differ with them, but it seems it hath Produced nothing, and I have nothing to make me believe, but that the Reason is, that the Lords were *Resolved* (say what we would) not to be satisfied; for I know nothing which they Offer'd, but it was fully Answer'd, nor any thing left undone to satisfy them if they would have been satisfied; what I have to say now is to clear something which the Lords may make much sound of.

When we urged Presidents, and made them our principal Reason, we told them, the way to decide what was in Difference betwixt the *Houses*, is, the usage of Parliaments; but to our Presidents we received no full Answer.

Then the Lords used this Reason, Namely, that they cared not for Presidents, because it was against the Express Law of the Land.

I Answer'd them we would join with them, if they could shew Law against it, and expected what they would Answer, but heard nothing: Much discourse there was, without Application, of the Great *Charter*, and of the Statute of 28 *Ed.* 3. but not applyed; so that I thought Law in a Lords Mouth, was like a Sword in a Ladies Hand, the Sword might be there, but when it comes to cut, it would be awkward and useless.

But

But I hear since, that their meaning was this, (which must be cleared by mentioning some Laws) that by *Magna Charta*, it is provided, That no Man shall be taken or Imprisoned, or Condemned but by the Law; and thence they infer, That no Man may be Imprisoned, but it must be by the Peers, or by the Law of the Land.

Again, 5. Ed. 3. No Woman shall be attached upon Accusation, or be adjudged of Life or Limb, but according to the Law.

25 Ed. 3. No Man shall be taken by a Petition to the King or his Council, unless by Indictment of lawful People, or by process of Writ at Common-Law, and (say they) this Case is to none of these.

28 Ed. 3. No Man shall be Imprisoned without due Process according to the Old Law of the Land: But this Case being neither by Presentment nor Indictment, the Lords would not stand upon our Presidents, but relied on this, as if it were enough in Bar of all our Presidents.

Therefore to open this, and the danger of the Consequence, there are in the Land many different Laws, and proceedings in these Laws, and Imprisonment upon them; and yet not one of them by Presentment, Indictment, or Tryal by Peers, tho' the Lords thought this was the Law and there was no other.

1. It is known that the Crown-Law, or Prerogative, is distinct Law from that between Party and Party.

2. There is the Law and Custom of Parliament, called a Law, *ab omnibus querenda, a multis ignorata, & a paucis Cognita.*

3. Then the Cannon-Law, (and it is much the Bishops forgot that) and there is nothing in that Law, more than standing in a White Sheet, which proceeds not by Indictment or Presentment, yet there is Imprisonment even in that Law.

4. There is the Law of Admiralty, and the Articles of *Cleron*, where there is proceedings of another Nature, and by Imprisonment.

5. The Law of Merchants, or of the Staple.

6. The Law of Arms, where is Imprisonment and Death, and yet different proceedings from the Common-Law in the Great *Charter*: Now no Man thinks that all those Courses of Proceedings are taken away by the Common-Law, and it is gross Ignorance to think it.

7. The Law of the Forrest, which is most different: So that to urge *Magna Charta*

Charta to this purpose, as if all Proceedings in those Cases must be according to the Common-Law, is absurd.

Then there are divers Writs in the Register.

One, When a Man hath received the King's Money to serve him, and went not, then there is a Writ to Arrest him upon a Certificate from the Captain under whom he was to serve.

Then the ordinary Writ, which belongs to the Law Ecclesiastic, *de Excommunicato Capiendo*.

Another, *de Apostata Capiendo*, to recover a Regular Run-away from his Convent.

Another, called *ne exeat Regno*, to Imprison a Man, who will not give Security not to go out of the Kingdom, and this is not Traversable any where, because it suggests that he will *Machinat* somewhat hurtful to the Kingdom, and upon that Suggestion he is Imprisoned.

Another, when a Man hath a *Leprosie*.

Another, to burn *Hereticks*, which concern'd the Bishops also, if they had pleas'd to think of it.

These Proceedings are no way agreeable to those mentioned in the Common-Law.

Then consider how this *Resolution* of the Lords strikes at the Law of Parliaments.

1. It is certain that all Imprisonment by Parliament is not by Presentment, Indictment, &c. So that by this means that Power is taken away.

2. Contempt against Parliamentary Authority, whosoever he is to appear before them; and disobeys them, they may imprison him in the *Tower*, and yet it is not against *Magna Charta*.

Whither therefore tends this ?

The Conclusion must be, that no Impeachment by the *Commons* must go on, unless it be by Presentment, and so there is an end of all that for which the Parliament is principally called, unless we are part of those 500 contemptible Ones, who are only fit to give Money; That may be reserved for us, but nothing else; tho' 23 *Ed. 3.* saith, *For redress of grievances in the Kingdom a Parliament shall be called every Year.* I would know which way we should redress Abuses, if we are so far from remedying in Parliament, that we must be shut out to the Common Courses in other Courts ?

Obj. The

Obj. The Lords may say, if you find the Statutes broken, and short, you shall have New.

Ans. And when these New Ones are broken, then we shall have a Remedy, so rise up Remedy, and go to the Remedy, *ad infinitum*, for there is no more Reason to think that a Second Law shall be maintained more than the First, and what way a Mischief shall be Redressed, other than by Parliament, I know not.

So that by this *Resolution* of the Lords, and denying to Commit upon this Ground (for they shew'd no other) every Thing for which a Parliament is useful is denied us.

After all this come to the very Case.

If a Treason be Committed, and the same is that *A. B.* is guilty of it, it is lawful to Apprehend him for it. If *Hue* and Cry pursue a Man, tho' he be not of evil Fame, yet he may lawfully be Imprisoned: If it proves false, he hath his Remedy; but that obstructs not the Law to bring him to Tryal: Any Watch-Man may Arrest a Night-Walker, and hath a Warrant in Law for it, and this is as good Process in Law, as any original Writ.

And after all this, Consider with what kind of Colour, when there are weighty Reasons why we should not mention special Treason, and that mentioning it generally, answers the Petition of Right, the whole Commons of *England* (who are in no degree represented by the Lords, They only represent their own Persons) should be denied the Securing a Person Impeached unless a particular Charge be given, how prejudicial so ever to the Kingdom.

Another thing, there is no Right which a Man hath in this Land, or any part of the World, but his Right is such, that if it be kept from him, he hath a means to come to it, otherways it is *Damnum sine Injuriâ*; for where the Law gives no remedy, there is but a supposition of Right: By the same measure it will follow, that there is no civil wrong can be done to any Man, but the Law provides a Remedy if that wrong be done; and if by the Law there is no Remedy, it is no wrong, consider then this Case.

There are in this Kingdom in the Civil State of it, three Estates, which the King hath then in making Laws: There are three Estates, whereof the King is Principal; sometimes they are mentioned as the King's three Estates, and he none of them: The Estates in general are, the Commons of the Kingdom,

Kingdom, (who are perfectly represented in this *House*) the Lords another, and the King another, and these are such, that there is no Petitory Action, nor the Laws directed to any one of them, but the Laws you make are to distribute Justice in other Courts.

For Instance, If all the Commons of *England* (who are one of the Estates) should Accuse one of themselves, the Party can have no wrong, because the Parliament can have no Action brought against them, nor can they be supposed to do any thing for Malice.

It is the same between the Body of the *Lords* and *Commons*; and there is no Law either to Vindicate the one or the other; but they stand as if there were no communicable Law betwixt them; but the measure between them is that which is good for the whole; for they are the makers of Laws for others, but no Laws can be fancied to reach the whole of the *Commons*, or of the *Lords*.

So that 'tis easily to be seen, how it hath been put upon us; so that now we are in such a Case, we know not to what end we shall proceed upon this or any other Impeachment; for by this Judicial power, you shall be excluded from any proceedings

ings by Laws of Parliaments; and so you take away the whole Right of the Kingdom.

Quest. But now what shall you do?

Ans. I see many Inconveniencies which may happen both ways, but I see so many this way, that if any Man gave such Council as is Charged upon the Earl of *Clarendon*, it is not so dangerous as the Case before you; for the Inconveniencies attending that Council would quickly shew it self by the Misery following: But this is a small thing begun with, which, like a Canker, may eat till it be uncurable, and that is as absolutely justifiable as this.

And now I have said this, I am perplexed what to say more, for all can bear me witness, what respect I have endeavoured to preserve to the *House of Peers*, but I am so sensible of this, that tho' I cannot forget my respect to them, yet I must lament the Condition into which they have brought themselves first, and us next, for they cannot think to avoid it.

The *House of Peers* is but a New Stile, called so, as *Jurors* are called *Peers*, from the Word *Par*; for every *Commoner* hath his *Peers* as *Lords* have; and the whole Stile formerly was *Arch-Bishops, Bishops, Dukes,*
&c.

&c. But *Pares Regni* is a new Stille. It is called the *Upper House*, and is to be look't upon with Reverence. The Lords have a Jurisdiction, but in this Case, I must be plain, their granted Jurisdiction ariseth from the *House of Commons*, if you Impeach not there your Judicelal Power will be very little. If a Lord be to be Tried for Treason, the Lords are but his Jurors; and tho' they Try him upon Honour, not upon Oath, yet they are no more his Tryers, than as out of Parliament: The Judge of Treason in the Lords *House*, is Constituted by the King, as a Lord *High-Steward*, and there is no other Judge, therefore I know not the Judicature they speak so much of.

There is another for Writs of Error, which are there determined, but the Jurisdiction of that is very little, for the Inconveniency of the Lords determining what could not be determined in other Courts, is so found out 28 *Eliz.* They are to be brought first into the Exchequer Chamber.

There is another way when Persons carry Complaints to the Lords, which is a Question, for Commoners ought not to carry Complaints there, except in some Cases from *Chancery*; therefore this Matter of Jurisdiction, which they talk of, is not such a wonderful thing as they would make it.

Therefore whatever we shall do after it, your Rights being so much concerned that you know not where the stay will be, it is

is necessary that you make a Committee to draw up a Protestation to be made by this *House* concerning this Matter, The Invasion of your Right in it, and the danger to the Kingdom by it.

Mr. *Colem*. The Lords say, That committing upon a general Impeachment is against Law, and I think it will appear so; I deny not, but a *Mittimus* without special Cause is legal, and grounded upon the Petition of Right, the Reason of which is to secure Men against Commitment by a special Warrant, and a Judge ought not to discharge where Treason is alledged, but in this Case it is different; The Judges cannot discharge a Man Committed after Examination, but the Lords ought not to Commit a Man, except there be particular Treason.

If I come before a Justice of Peace, and say, I accuse this Man of Treason, will any wise Man Commit him? he makes his Warrant indeed, but he that accuseth must go farther and make it more particular, and the special Matter must appear before he Commits, and this is the present Case.

The Common-Law is, That no Man ought to be Committed without particular Cause; because no Man can Commit in Capital Matters, without taking Examination before hand, otherwise no Man can justify a Commitment: Therefore I am

not

not satisfied that the Lords had not reason to deny. The Commons are in the nature of a *Grand-Jury* to present, but the Lords are the *Judges*; Commitment is not the Judgment but in order to it, and the Lords have a discretionary Power in the Case: The Lords say not that they will not Commit, but that they are not satisfied to do it without special Matter, therefore we ought to send it up.

Sir Rob. How. I have attended the Reasons given against making a Protestation, and whatever is said, is but levelling a *House* of Commons with every private Accuser; a Justice of Peace (it is said) must have Evidence before he Commit, and this *House* has had Inducements to Impeach, and may not a *House* of Commons Judge what is Treason as well as a Justice of Peace?

The Inconveniencies and Dangers laid before you, if you proceed, are nothing in comparison of those on the other side.

Had the Lords Imprisoned, they had before this had the particular Charge, and the Protestation is not to stop it, but to make way for it some other way; for it will resolve into a Remonstrance, by which you may give the Nation an Account of your Proceedings to come to a Tryal of this Business.

Mr.

Mr. *Vaugh.* By the Protestation spoken of, is meant to preserve the Rights of this *House* upon the whole Matter, and to give the Reasons of your Proceedings.

Sir *Tho. M--rs.* What is said, not being explained ; I know not what is meant by the Protestation ; if it be but to enter it into our Book, I am not against it, if it be an Appeal to the Nation, pray consider what you do.

Mr. *Vaugh.* This way of Protestation differs from entring in our Books, but the best way is to draw it up, and to bring it to you, and then any Man may take Exceptions against it ; for the meaning is, that this *House* Claims its Rights.

Mr. *Garaw.* First make your Protestation, and then Appeal to the King.

Mr. *Vaugh.* None can surmize that you mean an Appeal to the People by what is moved, for what is done, must be done to some part of the Parliament ; the King, Lords, or your selves : And they who speak of it (if it were done with evil intent) deserve to be called to the Bar ; when it is brought before you for your Approbation, you may either retain, or reject it.

Sir Walt. You. I desire that the *House* may know before hand to whom they are to Remonstrate, and on what ground, and therefore to Adjourn their Debate now.

Mr. Trev. What Appeal you make ought to be to the King, but bring it in hither and give it what Name you please.

Sir Rob. Ark. As I would be tender of your Priviledges, so, of giving Offence to the Lords, therefore we shall endeavour to be Unanimous in this *House*; a Protestation is Named, I am a stranger to it, and would understand clearly what is before we do it; That it is a Course warranted by Presidents and Proceedings of Parliaments, considering what effect it hath had in late times, therefore we may do well to adjourn the Debate and Consider of it.

Sir Tho. Litt. This Protestation will be like that in the Lord *Maynard's* Case, but somewhat longer, and ought to go farther then to one of the Estates, and be kept within the walls.

Mr. Swinf. You sent up a Charge to the Lords in general, desiring that the Earl of *Clarendon* should be secured, and in convenient time you would send up Articles; from that time it hath not been done, and the
Lords

Lords have passed several Votes about it since, but you have not passed one.

First they Voted, that they had not complied with your desires for want of particular Treason; Then you give them Reasons, they are not satisfied with them; then a Free Conference, they are still unsatisfied; and all this while you have not come to any resolution: So that till you come to a Vote, no Man knows but that you are satisfied with their Answer; for when the Matter of the Protestation is brought in, we shall not be ready for it till we have resolved, that what the Lords Insist on, is an obstruction of Justice, and you cannot agree with them without great Inconvenience to the Nation; Therefore put a Question, *That the Lords, not having agreed to Secure the Earl of Clarendon upon the general Impeachment, have obstructed the Publick Justice of the Kingdom in proceedings of Parliament, and is of dangerous Consequence:* This is necessary, because the Lords have heard nothing from you, but endeavour to satisfy them.

Sir John Good. This Question will be a greater Accusation of the whole House of Lords, than the other is of the Earl of Clarendon. If you will go by way of Protestation, and keep it within your own Walls, I like it better than this Question.

Sir Rob. How. The putting this Question is no Charge upon the *House* of Lords; and therefore if that Gentleman thinks it so great an one, sure he thinks the Charge against the Earl *Clarendon* to be a very small one. Is there any Obstruction to Justice? If not, Why do we not Comply? If there be, we cannot it seems Complain without Charging the Lords. Keeping it within your own Walls, is but like a Man, when he is alone, muttering Arguments to himself, and Commending himself for it. If you meet with any Obstructions, pray first put the Question, whether you are obstructed.

Sir Rob. Ask. It is no light matter to Charge the Lords with Obstructing Justice; therefore the thing being new, pray adjourn it till to morrow, that we may be more of one Mind.

Then the Question was stated, Namely,

That the Lords not having complied with the desire of the Commons in Committing the Earl of *Clarendon*, and Sequestering him from Parliament upon the Impeachment from this *House*, is an Obstruction to the publick Justice of the Kingdom, and is a President of evil and dangerous Consequence.

Resolved, *That the Question be Put,*

And being put, *Resolved in the Affirmative.*

Resolved, *That a Committee be appointed to draw up a Declaration to Vindicate the Proceedings of this House.*

Decemder, 3.

A Message from the Lords by two Judges, That they have received a large Petition from the Earl of *Clarendon*, which intimates that he is withdrawn.

Sir Tho. Tompk. Moved to take care to get the *Sea-ports* stopt.

Sir Tho. Lit. I believe he is now past stopping, but we should do it, tho' it have no effect; lest it look as tho' we would have him escape.

Sir Rob. How. The Lords seem now mistaken in their Opinion at the Conference, they said there was no fear of his Running away, and in our *House* it hath been Jested that he was not like to Ride Post. Besides the Expression in the Message is (withdrawn) which may be an inward Chamber, therefore 'tis fit to desire to see the Petition, and Command some Members to prepare

pare something to Vindicate your selves in discharge of your Duty.

Mr. *Seym.* You cannot take Notice to the Lords of the Petition, unless they think good to Communicate to you, but make the Declaration

Mr. *Vaugh.* I look upon what the Lords say as doubtful, therefore beware lest you do something misbecoming you. They only say, that he is withdrawn, but not what is his Petition ; for the saying that he is withdrawn, is not the Matter of a Petition. Perhaps he is gone into the Country, the Message seems light, and you are to take no notice of it. If it be of Moment, and they think us Concern'd, they should let us know it ; and I cannot think so of the Lords, that they would use that word, if he were fled : therefore send a Message, to know whether fled or withdrawn.

Mr. *Sol. Gen.* When a Delinquent signifies to his Judges, that he is withdrawn. it cannot signifie any thing, but that he is withdrawn from their Judgment. None but a mad Man will tell them that he is fled, fearing what may follow ; it would be well if their Care would prevent his flying, but you cannot Answer it, if you hear they do nothing, and so seem to say, fare him well.

Upon all which Motions, *Ordered,*

That Sir *Tho. Cliff.* (Comptroler of the King's Household) be sent to the King, to desire the *Ports* may be stopped.

December, 4

The Lord *Fitzharding* makes Report from the King, that the Message for stopping the *Ports* being delivered him, he had taken Care accordingly.

A Message from the Lords to desire a speedy Conference:

From which Mr. *Solicitor* Reports.

We attended the Lords at the Conference, which was delivered by the Duke of *Buck.* who said to this purpose.

That the Lords had Commanded him to deliver to us that Scandalous and Seditious Paper sent from the Earl of *Clarendon*, desiring us to present it to you; and to desire you in convenient time to send it to them again, for it had a *Stile* which they were in love with, and desired to keep it.

Which said Paper was read, and is as follows, *viz.*

To

TO THE
Right HONOURABLE
THE
LORDS

Spiritual and Temporal,

IN

Parliament ASSEMBLED.

*The humble Petition and Address
of Edward Earl of Clarendon.*

May it please Your Lordships,

I Cannot express the unsupportable
Trouble and Grief of Mind I sustain under the Apprehension of being Misrepresented to Your Lordships, and when I hear how much of Your Lordships time hath been spent upon the mention of me, as it is attended with

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more

more publick Consequences, and of the Differences of Opinion which have already, or may probably arise between Your Lordships and the Honourable House of Commons; whereby the great and weighty Affairs of the Kingdom may be obstructed in the time of so general a dissatisfaction.

I am very unfortunate to find my self to suffer so much under two very disadvantageous Reflections, which are in no degree applicable to me.

The First from the greatness of my Estate and Fortune, collected and made in so few Tears, which if it be proportionable to what is reported, may very reasonably cause my Integrity to be suspected.

The Second, That I have been the sole Manager and chief Minister in all the Transactions of State since the King's return into England, to August last, and therefore that all Miscarriages and Misfortunes ought to be imputed to me and my Councils.

Concerning my Estate, Your Lordships will not believe, that after Malice and Envy hath been so inquisitive and so sharp sighted, I will offer any thing to Your
Lordships,

Lordships, but what is exactly true; and I do assure Your Lordships, in the first place, That (excepting from the King's Bounty) I have never received nor taken one Penny but what was generally understood to be the just lawful Perquisites of my Office, by the constant Practice of the best Times, which I did in my own Judgment conceive to be that of my Lord Coventry, and my Lord Elsmore; the Practice of which I constantly observed, altho' the Office in both their Times was lawfully worth double to what it was to me, and I believe now is.

That all the Courtesies and Favours which I have been able to obtain from the King for other Persons in Church or State, or in Westminster-Hall, have never been worth me Five Pounds: So that Your Lordships may be confident I am as innocent from Corruption as from any disloyal Thought, which after near Thirty Years Service of the Crown, in some Difficulties and Distresses, I did never expect would be objected to me in my Age.

And I do assure Your Lordships, and shall make it very Manifest, That the

Several Sums of Money, and some Parcels of Land, which His Majesty hath Bountifully bestowed upon me since his return into England, are worth more than all I have amounts unto; so far I am from advancing my Estate by indirect means. And tho' this Bounty of his hath very far exceeded my Merit, or my expectation, yet some others have been as fortunate at least in the same Bounty who had as small pretences to it, and have no great Reason to envy my condition.

Concerning the other Imputation of the Credit and Power of being chief Minister, and so causing all to be done that I had a mind to, I have no more to say, than that I had the good fortune to serve a Master of a very great Judgment and Understanding, and be always join'd with Persons of great Ability and Experience, without whose Advice and Concurrence, never any thing hath been done.

Before His Majesty's coming into England, he was constantly attended by the then Marquess of Ormond, the late Lord Culpeper, and Mr. Secretary Nicholas, who were equally trusted with myself, and without whose Joyn't Advice and Concurrence,

rence, when they were all present (as some of them always were) I never gave any Council. As soon as it pleased God to bring His Majesty into England, he Established his Privy Council, and shortly, out of them he Choose a Number of Honourable Persons of great Reputation (who for the most part are still alive) as a Committee for Forreign Affairs and Consideration of such things as in the Nature of them required much Secresse, and with these Persons he vouchsafed to Joyn me: And I am confident this Committee never transacted any thing of Moment (His Majesty being always present) without presenting the same first to the Council-Board, and I must appeal to them concerning my Carriage, and whether we were not all of one Mind, in Matters of Importance.

For more than two Tears I never knew any Differences in the Councils, or that there were any Complaints in the Kingdom, which I wholly impute to His Majesty's great Wisdom, and the intire Concurrence of his Councillours, without the Vanity of assuming any thing to my self; and therefore I hope I shall not be singly charged with any thing that hath since
 fal'n

fall'n out amiss. But from the time Mr. Secretary Nicholas was removed from his Place, there were great Alterations; and whosoever knew any thing of the Court and Councils, know well how much my Credit hath since that time been diminished, tho' His Majesty graciously vouchsafed still to heere my Advice in most of his Affairs: Nor hath there been, from that time to this, above one or two Persons brought to the Council, or preferr'd to any considerable Office in the Court who have been of my intimate Acquaintance, or suspected to have any kindness for me; and most of them, most Notoriously known to have been very long my Enemies, and of different Judgment and Principles from me, both in Church and State, and have taken all opportunities to lessen my Credit with the King, and with all other Persons, by Mis-representing and Mis-reporting all that I said or did, and perswading Men I have done them some prejudice with His Majesty, or crossed them in some of their Pretensions; Tho' His Majesty's Goodness and Justice was such, that it made little Impresson upon him.

In

In my humble Opinion, the great Misfortunes of the Kingdom have proceeded from the War, to which it is Notoriously known that I was always most averse, and may without vanity say, I did not only foresee, but declare the Mischiefs we should run into, by Entering into a War, before any Alliances made with the Neighbouring Princes, and that it may not be imputed to His Majesty's want of Care, or the Negligence of his Councillors, that no such Alliances were entred into, I must take the boldness to say, His Majesty left nothing unattempted in order thereunto; and knowing very well, that France Resolved to begin a War upon Spain, as soon as his Catholick Majesty should depart this World, which being much sooner expected by them, They had in the two Winters before been at great Charges in providing plentiful Magazeens of all Provisions upon the Frontiers, that they might be ready for the War, His Majesty used all possible means to prepare and dispose the Spaniard with that apprehension, offering his Friendship to that degree, as might be for the Benefit and Security of both Crowns.

But

But Spain flattering it self, That France would not break with them, at least, that they would not give them any Cause by Administring Matter of Jealousie to them, never made any real approach towards a Friendship with His Majesty, but, both by their Embassadors here, and to His Majesty's Embassador at Madrid, always persisted, as Preliminaries, upon the giving up of Dunkirk, Tangier and Jamaica.

Tho' France had an Embassador here, to whom a Project of a Treaty was offered, and the Lord Hollis, His Majesty's Embassador at Paris, used all endeavours to pursue and prosecute the said Treaty, yet it was quickly discerned, That the principal Design of France was to draw His Majesty into such a nearer Alliance as might advance their Design; without which, they had no mind to Enter into the Treaty proposed.

And this was the State of Affairs when the War was Entred into with the Dutch, from which time, neither Crown much considered the making any Alliance with England.

As

As I did from my Soul abhor the Entering into this War, so I presumed never to give any Advice or Council for the way of managing it, but by opposing many Propositions, which seemed to the late Lord Treasurer and my self to be unreasonable, as the payment of the Seamen by Tickets, and many other Particulars which added to the Expence.

My Enemies took all occasions to enveigh against me, and making their Friendship with others out of the Council, of more licentious Principles, and who knew well enough how much I disliked and complained of the Liberty they took to themselves of reviling all Councils and Councillours, and turning all things Serious and Sacred into ridicule, They took all ways imaginable to render me ungrateful to all sorts of Men, (whom I shall be compelled to Name in my Defence) perswading those that miscarried in any of their Designs, That it was the Chancellours doing; whereof, I never knew any thing. However, they could not withdraw the King's Favour from me, who was still pleased to use my Service with others, nor was there

there ever any thing done but with the joynt Advice of at least the Major part of those who were consulted with. And as His Majesty commanded my Service in the late Treaties, so I never gave the least Advice in private, nor wrote one Letter to any one Person in either of those Negotiations but upon the Advice of the Council, and also after it was read in Council, or at least by the King himself, and some other; and if I prepared any Instructions or Memorials, it was by the King's Command, and the request of the Secretaries who desired my Assistance; nor was it any wish of my own, that any Ambassador should give me any account of the Transactions, but to the Secretaries, to whom I was always ready to advise; nor am I conscious to myself of ever having given Advice that hath proved mischievous or inconvenient to His Majesty; and I have been so far from being the sole Manager of Affairs, that I have not in the whole last Tear been above twice with His Majesty in any Room alone, and very seldom in the two or three Tears preceding.

And

And since the Parliament at Oxford, it hath been very visible, that my Credit hath been very little, and that very few things have been hearkned to, which have been proposed by me, but contradicted, eo nomine, because proposed by me.

I most humbly beseech Your Lordships to remember the Office and Trust I had for seven Tears, in which, in Discharge of my Duty I was obliged to stop and obstruct many Mens pretences, and refused to set the Seal to many Pardons and other Grants, which would have been profitable to those who procured them, and many whereof, upon my Representation to His Majesty, were for ever stopt, which naturally have raised many Enemies to me: And my frequent concurring, upon the desires of the late Lord Treasurer, (with whom I had the Honour to have a long and vast Friendship to his Death) in Representing several Excesses and Exorbitances, the yearly Issue so far exceeding the Revenues, provoked many Persons concerned, of great Power and Credit, to di

me all the ill Offices they could. And yet I may faithfully say, That I never medled with any part of the Revenue or the Administration of it, but when I was desired by the late Lord Treasurer to give him my Assistance and Advice, having had the Honour formerly to serve the Crown as Chancellour of the Exchequer, which was for the most part in His Majesty's presence. Nor have I ever been in the least degree concern'd, in point of Profit, in letting any part of His Majesty's Revenue; nor have ever Treated or Debated it, but in His Majesty's presence, in which my Opinion concurr'd always with the Major part of the Councillours who were present.

All which, upon Examination, will be made manifest to Your Lordships, how much soever my Integrity is blasted by the Malice of those who I am confident do not believe themselves. Nor have I in my Life, upon all the Treaties, or otherwise, received the value of one Shilling from all the Kings or Princes in the World, (excepting the Books of the Louvre Print sent me by the Chancellour of France,

France by that Kings direction) but from my own Master, to whose intire Service, and the Good and Welfare of my Country, no Man's Heart was every more devoted.

This being my present Condition; I do most humbly beseech Your Lordships to entertain a favourable Opinion of me, and to believe me to be Innocent from those foul Aspersions, untill the contrary shall be proved; which I am sure can never be by any Man worthy to be believed: And since the Distempers of the Times, and the Difference between the two Houses in the present Debate, with the Power and Malice of my Enemies, Who gave out that I should prevail with His Majesty to Prorogue or Dissolve this Parliament in Displeasure, and threaten to expose me to the Rage and Fury of the People, may make me to be look'd upon as the Cause which obstructs the Kings Service, and Unity and Peace of the Kingdom.

I most humbly beseech Your Lordships, that I may not forfeit Tour Lordships Favour and Protection, by With-drawing
I my

my self from so powerful a Persecution, in hope that I may be able, by such withdrawing, hereafter to appear, and make my Defence, when His Majesty's Justice (to which I shall always submit) may not be Obstructed, or Controled, by the Power and Malice of those who have sworn my Destruction.

CLARENDON.

Mr. Vaugh. I think it not convenient to loose more time about this Paper. Since the time of the Earl of *Clarendons* Name being mention'd here, I had nothing to Charge him with till now, but most of the Heads of this Charge are so weighty, that I am confident, they will be easily and thoroughly proved, tho' I know not how; so that I admire at his Confidence, to Charge this House, and so the Nation, as his Persecutors, and that in such a Condition, as he hopes to vindicate himself. Its the first time that ever I heard an Innocent Man run away under the greatest Charge, with hopes to return again and vindicate himself.

Then

Then mark one Expression; he saith, *he is as far from Corruption, as from Disloyalty*: If he said he was guilty of neither, he had said something; but by that Expression he may be guilty of both: So insolent a Paper I never met with in this Kingdom, nor have I ever read the like in any other; so inconsiderable a part of the Nation as he is to lay it upon the Nation, who, if innocent, might defend himself, if Guilty, why doth he Charge the Nation with persecuting? Therefore without troubling your selves with it, do, as the Lords have done; who deliver it to you as a Scandalous and Seditious Paper; it hath Malice in it, and is the greatest Reproach upon the King and the whole Nation, that ever was given by Man. Therefore put the Question whether his Paper shall not have the Character, that it is a *Scandalous and Malicious Paper, and a Reproach to the Justice of the Nation*.

Resolved upon the Question.

That the Paper sent to the Lords by the Earl of Clarendon, and by them sent down to the House of Commons, and now read, is *Scandalous and Seditious, and doth Reproach the King and the Publick Justice of the Nation*.

Sir Rab. How. You have voted this Paper Scandalous, and therefore it should not
live,

live, wherefore I move it should be burnt by the *Hangman*.

Mr. Garraw. The Paper is the Lords, and you must send it to them, but enter it into your Books, and your Vote upon it.

Resolved, *To have it burnt.*

Sir Rob. Car. The Paper is the Lords, therefore move them to Concur that it may be burnt.

Sir Rob. How. The meaning of my Motion is, because the Duke of *Buckingham* desired the Paper again for the admirableness of the Stile, it is entered into their Books already, and they need it not to that end; therefore desire the Lords Concurrence to burn it.

Resolved, *To send it to the Lords to that end.*

December, 5.

A Motion being made to send to the Lords in pursuance of the Vote about burning the Paper.

Mr. Vaugh. I am against sending up to the Lords to that purpose, because you have Ordered to enter the Paper into your Books, and when a Paper is burnt, it is not to stand upon Record, but should be rased out;

out; which two Things are a perfect Contradiction, therefore let it rest as it is; We have Voted it *Scandalous*, &c. The Lords tell us not that they have done any such Thing, tho' they ought to have done it first.

As for the Earl of *Clarendon*, he being now gone, if such a like occasion should fall out, we are in a worse Condition than we were; for there is this President against us, in a Case now Manifest: And it beco mes us to do something in Order to the Lords Concurring, that so a good Understanding may be got; therefore I shall propound this to you, to be sent up to them to that end.

Namely, when any Subject shall be Impeached by the Commons before the Lords in Parliament with desire to secure him, such Person by the Law of the Land ought to be secured accordingly. This you have in effect Voted already, in saying the *Justice of the Kingdom is obstructed by their not doing it.*

Secondly, when such Impeached Persons shall be secured, the Lords may limit a certain time for bringing in the Charge, to prevent delay of Justice.

This may Salve all, and prevent such ways, as may be displeasing to the Lords, and perhaps us also, in some Cases hereafter.

Mr. *Swin.* I am perswaded that according to Rules of Parliament, when you Charge by Impeachment generally, and promise in due time to send up your Charge, they ought to secure, but they not having done it, I question whether you could do what you have, but the Earl of *Clarendon* flying, it is Manifest Justice was obstructed; for he might have been brought to his Tryal, if the Lords had secured him; but now your Vote is made good, which seems to lay the advantage on your side.

Sir *Rob. How.* I think this Message to the Lords will destroy the way of vindicating our selves by Declaration; therefore finish the Declaration, and then Resolve before you publish it, whether to send up this Message.

Mr. *Vaugh.* If the Lords agree with us, we may spare the Declaration, but if they agree not now, they will much less hereafter: Your Declaration, can amount to no more but this, make a Narrative of the invalidity of the Lords Presidents, but then you must of necessity do something more, else your Labour is in vain; therefore this Message with these Votes are necessary.

Sir *Rich. Temp.* I expected that when the Earl of *Clarendon* had been fled, the Lords would have desired the King to Issue out a Proclamation

Proclamation to apprehend him, seeing they have been the occasion of his Escape ; therefore now desire their Concurrence to go to the King to that end, and if they Concur, they have upon the Matter granted Commitment upon a general Impeachment.

Mr. Vaugh. I thought it my Duty to offer you what I have done, if you like it not, I desire to be excused in serving you in the Declaration, and that they who think it necessary would be pleased to take the pains to do it.

Sir Tho. Lee. If you declare, it will beget an Answer, and where will that end ? If you send up your Votes, and the Lords agree, your end is Answered ; for it is a yielding that which they have yet denyed : Your declaring, and entring it upon the Journal, will be to no purpose ; it is but like a Man, who having been beaten publicly, in the Chamber calls him who did it Rogue.

Mr. Hampd. I desire that the Words (*Law of the Land*) may be left out, and the Words (*Law of Parliament, or, Usage of Parliament*) put instead of them ; for it hath been shewed us, that there are several ways of Impeachment besides Common-Law.

Mr. *Vaugh.* Those Words were purposely put in, because at the free Conference, when we pressed the *Law of Parliaments*, the Lords pressed the *Law of the Land* by way of Negative, as if the *Law of the Land* were otherwise, but rather than that shall be any obstruction, put it by *Law*.

Mr. *Stem.* Leave out the Words (*by Law*) for if a Man be secured, it is Implied by them who do Commit that it is according to *Law*.

Then it being Moved to draw both Votes in one.

Sir *Tho. Litt.* Tho' you should put both Votes into one, It will not Answer your end, for the Lords will not Concur with the first Part, and yet may make use of what Part you grant of it, that is the last, and so have advantage against you; but there is another Reason, why you should forbear these Votes, Namely, *Prudence*.

The Earl of *Clarendon* being gone, there is an expectation that a Bill should be prepared to do something farther, wherein I hope both Houses will join; if you send up this, you will give disturbance to that Bill, and if you should enter this in your Books, in Order to send it up hereafter, they will hear of it, as done to make them swallow their

their former *Resolves*. Therefore defer it for the present.

Mr. *Trev*. Consider whether the Matter betwixt you and the Lords is not well as it is: You have Voted, That when a Man is generally Impeached, he ought to be secured, and that the Lords not having done it, is an obstruction to Justice; and what will it signifie to carry it to the Lords? what hath since fal'n out, justifies you, and lays the disadvantage upon the Lords: The World expects now what you will do farther, and that must be by Concurring with the Lords.

Sir *Tho. Cliff*. We all agree to these Votes, in Order to justifie your Rights; but what is the use of it? You have already done it in your Books, and you cannot expect the Lords should go so much against their own Votes, this therefore will but widen the Gap, it being telling them they must eat their words.

Sir *Tho. Litt*. Those, who have had a hand in the Charge against the Earl of *Clarendon*, have been thought sometimes too Violent, sometimes too Remiss, as not able to make out the Charge: But what I speak now, is for your Honour, which will be wrong'd in this Proceeding; I am for bringing the Impeachment to something; and

and therefore against these Votes: Now you make a Declaration of your own Rights, and Enter it upon your Books, that not only the Vote may appear, but the Ground of it, but not to declare to the Lords, which will beget an Answer and exasperate. It is now unseasonable to make the Lords retract, therefore lay it aside; for tho' I am confident that Gentleman did it to no such end, yet if I would Design any Thing to the Earl of *Clarendon's* advantage, I could not take a better way than this.

Mr. Vaugh. This is but the affirming all which hath been done already, and I am for none of those, who are contriving for any Thing out of the House.

Sir Will. Covent. This Question is not now seasonable, tho' it is a better expedient than the Declaration as Things now stand, and considering what hath past, I am apt to think the Lords may do it of their own accord, and you would not willingly have a Negative to your Votes. Therefore seeing your Votes may be of use hereafter, put no Question at all, but adjourn the Debate to a proper Season.

Mr. Vaugh. I am against the Adjourning of it, and have given Testimony, that I have done nothing to be thought to do that
which

which is so much for the advantage of the Earl of *Clarendon*, and shall take heed of doing any Thing hereafter to be so reflected on.

Sir Tho. Litt. I hope I avoided any such Reflection nor speak any Thing to such purpose, I do not beleive, nor ever did think any such Thing, and hope that Gentleman himself believes that no Man in this House hath more Honour for him than I,

Sir Job Charle. Let the World see that you do not intend to restrain your proceedings to the Earl of *Clarendon*, but make it a general Care ; and therefore are concerned in Honour to put the Question.

Resolved upon the Question.

That the Question be put.

Resolved, That both the Questions propounded by Mr. Vaugh. and put singly in the Affirmative, be carried up to the Lords.

December, 13.

A Bill was brought from the Lords, to Banish the Earl of *Clarendon*, and read.

After reading, several Objections being made, and it being Alledged, that it was an abuse put upon the *Commons* by the *Lords*,
and

and that a Bill of Attainder being propounded, after some Debate, the House pass'd this Vote.

Resolved, That this House taking notice of the flight of the Earl of Clarendon, being under an Impeachment of High Treason by this House; the King's Majesty be humbly desired to Issue out his Proclamation for Summoning the said Earl to appear by a Day, and to apprehend him in Order to his Tryal.

Resolved, To send to the Lords for their Concurrence to this Vote.

December, 14.

A Message from the Lords for a Conference, at which they delivered two Reasons, why they could not Concur.

1. First, for that they conceive a Proclamation in the way proposed, would be ineffectual, since it is not *supæna Convictionis*, which cannot be till particulars in Order to Tryal be declared.

2. That, what the House of Commons hath proposed, and do propose at present, is intended in Order to a judicial way of Proceeding; but since the Earl of Clarendon's Flight, their Lordships upon Consideration of the whole State of Affairs, and of the Kingdom, have upon Grounds of Prudence and Justice,

Justice, thought fit for securing of King and Kingdom, to proceed in a Legislative way against the said Earl, and have to that end, past and sent down to them a Bill of Banishment and Incapacity against him, with which this Vote is inconsistent.

December, 16.

The said Reasons from the Lord being Reported and Considered, and it being Moved that the House would declare themselves unsatisfied with them.

Sir *Tho. Cliff.* I am against passing a Vote at present upon the Lords Reasons, but read the Bill sent down from thence, and Summons him by it to appear by a Day.

Mr. *Trev.* Some are against the Bill, because it goes too far, Condemning before Hearing, others would have it to go farther. Summons is in Order to Hearing, Tryal, and Judgment; of those he hath made himself incapable by Flight, and hath in his Paper told you, *That he will neither be heard, nor tryed by you:* Tho' you expected to have him secured by a general Accusation, yet you never expected Judgment upon it. Then it is said, *This Banishment falls short of Treason,* but we are not to pass Sentence for Grimes but as a Council propound to the King what is necessary in this Case: Then consider whether this

this Bill will Answer our Ends, and if it doth, delay will make it worse; I think we should make it reach them. What if he hath Life in other Parts, his Family Untainted, and his Children alive, and enjoy his Estate?

Sir *Rob. Carr*. You have Ordered to consider the Reasons from the Lords, therefore do it.

Mr. *Hen. Covent*. The Motion to read the Bill is not against your Order, because part of the Reasons given by the Lords is, *That you have a Bill, and till you have read the Bill, you cannot lay by the Reasons.* The Earl of *Clarendon* is fled, you have a tye upon him in having his Innocent Relations, and by Proceeding farther, you make him desperate, you are now in an even way with the Lords; therefore read the Bill.

Mr. *Swinf*. You may go upon the Reasons, and yet not reject the Bill; for when you sent to the Lords about a Proclamation, and went not upon the Bill, it was, because what the Bill drives at is the highest Punishment next to Death. Therefore Consider what weight is in the Reasons; One of them seeming to put you upon the Bill, they put you thereupon on a Legislative Way; they will neither Secure
not

nor Summon him, but will Condemn him unheard. They cannot Secure him upon a Charge of Treason, nor yet Summon him, but they can Condemn him; and this they put you upon, which is against Honour and Justice, especially to do it upon Reason of State. The Legislative Power of Parliaments is great, it hath no bound but the Integrity and Justice of Parliaments. If Reason of State be a Motive of Parliament to Banish one Man, so it may be for many. If you go in this Legislative way, you bring upon your selves all the Dishonour of the Business, but the Lords will have some excuse, which you cannot, for they look'd upon the Charge so slight, as not to Imprison him; the party is gone, because he was not Secured, apprehending (he saith) fear of the Multitude, not of his Tryal, so that the Lords not giving Credit to your Charge against him, he says, *he flies not from justice.* Now, if upon this Bill you shall Banish him, it would be said you could not make good the Charge; and therefore laid this Sentence upon him.

The President is also dangerous, if having gone so far in a Judicial Way, you should now go in a Legislative. If upon Reason of State Lords may be Banished, it may be by dozens: As you proceed Justly, so you will be Justified.

Nor

Nor is the Danger greater if the Lords go by Proclamation, and he be put into Custody when he comes, if he can practice any Thing, will not he be less capable when under the Proclamation, than when this Bill is Passed, which Condemns him without Hearing, and I am not for any Punishment till Heard. In *Cromwells* Case, who Moved in *Hen. VIII.* time, to Attaint a Lord Unheard, the Judges declared they might, and it would stand, afterward the said *Cromwell* was Attainted and Condemned Unheard, and such Councel usually falls upon those that Councell'd it.

Sir Rob. How. The Earl of *Clarendon* saith, That he doth not withdraw from your Justice, but fear of Tumults; but that Reason any Man may give for his flying, if it will be an excuse; but he might have secured himself from Tumults by rendring himself, and his Innocency upon his Tryal would have cleared him. This at last may come to a free Conference, then you may be left to go along with the King; the House riseth and doth nothing, and then the World will see that this Business will assure the King of *France*, That he hath a Man with him so Great, as to hinder us from doing any Thing against him: Therefore as you ought to do something against him, see whether it may not be done by the Bill by resuming
his

his Lands, &c, if he come not in by a Day.

An Exception may be against this way, Namely, That there is no Attainder, but if there had been such a Bill, the Thing which should sway me should be the Duke of York's Marriage: So, that if you Commit this Bill, you may add all Severities, except that of Attainder, and if he come by a Day, then all to be void. If you go by Proclamation, the Lords may not Concur and you loose your Ends. By this Bill all favour that he can expect is shewed, and this way will be the best Confutation of the Lords Reasons; therefore Commit the Bill.

Mr, *Secretary Morr.* I am for Committing the Bill, tho' it be condemning Unheard; because he could not but conclude it would be so. *Et volenti non fit Injuria.*

Sir *Ric.Temp.* You have proceeded against this Earl in all ordinary ways, and have been baffled by the Lords. In *Edward the Third's* Reign, *Adam de Berry* fled, and a Proclamation went against him, and the Commons neither did, nor ever were bound to deliver their Articles till the Party appeared, and in that Case they delivered not their Articles till the last Day, when

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he

he not appearing was Convicted. When you would go by Attainder, they tell you, Deliver special Matter, and we will Summon him; when you ask a Proclamation, they tell you, Deliver special Matter: If you declare the Matter to the Court, it is upon Record, and all may know it. You have tryed all ways Legal and Regular, and they will do you Justice in neither. Now what can you do? except you and the Lords combine in Justice together, he must escape, and if you can be made to differ, he goes away in a Smoak. If you go to the King for a Proclamation, you must return to the Lords for Justice. I am sorry the *Ivey* hath been so near the *Oak*, that you cannot touch it, without touching that. There remains a Bill before you, and in that you are upon equal Terms with the Lords; therefore give him a Day to be Heard, and if he come, let him, but then his Penalties are too low for his Crimes; therefore read the Bill, go higher, degrade him of Honours, Forfeit his Lands, and whether you will go so far, I leave with you.

Mr. *Soll. Gene.* It is not possible to agree with the Lords in their Reasons, but the Reason must be because the Bill is good. But if any Man thinks it is good upon the Lords Reasons he is mistaken; and therefore my Advice is to proceed upon the Bill,

Bill, tho' not upon the Reasons from the Lords. Some think the Punishment in the Bill too little for the Crime, others too much, because not Summon'd; so that it must fall out, That a Person Impeached by the *House of Commons* must see the *House* rise without any marks of displeasure upon him: Can any Man be Heard, who will not be Heard? Why should not you proceed in such a way against him, as whose very Flight amounts to a Confession? And have you not burnt his Paper for reflecting upon the *House*? and can you think he will appear who is departed in despair of the Court? and now you are contending to give him time.

Then consider the Thing in it self. Suppose the King had a mind to Attaint him, the King can do it without your help, for he may be *Outlawed* for High-Treason; for tho' that be Reversable at Common-Law, if he be beyond Sea, yet by two express Acts of Parliament it is otherwise, but the King cannot Banish him without your Concurrence: Suppose him Fled and Attainted, so that the Question is not upon his Life, but his Estate, suppose your Justice satisfied in that, is it not past all manner of Consideration that the King cannot upon Application restore it? So, that all you lookt for by Attainder, is done

by this Bill of Banishment, for his Life is saved by Flight, as would his Estate by Compassion; but there is something in this Bill, which, without it, you can never get, that is, you put him under your Displeasure, which, the King cannot Pardon; and and will you have it thought abroad, that the Earl of *Clarendon*, fled as he is, hath been something too hard for the Two Houses?

Sir Tho. Litt. If there be a necessity of differing with the Lords, and I thought the difference would produce such Effects, I should not speak, but they only tell you 'tis unnecessary and ineffectual. You have Impeached, and are now told if you proceed, it will make difference; but I fear another greater Danger than this difference. The World will say you were willing he should fly, because you could not prove by flying he hath Forfeited his Estate; if the King give it him again it is his Mercy; but do you Justice: Therefore press for a Proclamation, for the Bill is inconsistent with your Honour.

Mr. Vaugh. I have listened with much attention to this Discourse, and understand it as little now as at the beginning, the Discourse being nothing adequate to that end. You have Reasons from the Lords why

why They agree not with you, and if you agree with the Reasons, the Summ is to read the Bill ; but if you agree not, you must desire a Conference, and if they Concur, you may have a Proclamation, if not (as I think they will not) you are where you were: We suppose him not to be in *England*, and if so, what is the Proclamation more than the King's Writ? it reacheth no Man out of the Kingdom. Its true, in some Cases, if the Persons are gone out of the Land they are Summon'd, and if they come not, their Lands are Seized, but it is not by Proclamation, which signifies nothing if the Party be gone.

Then go on, suppose the Lords Joyn in desiring a Proclamation, the end of which is Appearing and Apprehending, possibly you gain one part, that if he be apprehended, they do Imprison him upon a general Impeachment ; but if they agree not, what benefit have you by it? None: But if he appears, to what is it? there is no Charge, if apprehended, to Answer the general Charge.

Then the Third way is, if the Lords agree not, that you should go to the King, and there is a more dangerous Rock in that, than in any thing; for we never heard of a Commitment *per ipsum Dominum Regem*,

but *per mandatum Domini Regis*, because against the King lies no Damages : What then must you do ? many think it injustice to proceed, if he be not called by Proclamation. But it is plain, if you proceed upon this Bill, you go not upon your Impeachment, but because he is fled from the Justice of the Land, wherewith you have Charged him in burning his Paper ; and it imports little, that he saith he is Innocent ; for why then doth he fly ? Shall we abate him of what he ought to suffer for his saying so ? He is fled from the Justice of the Parliament, and therefore is proceeded with, and for what others say, you ought not to regard popular Reasons, but to pursue your own ; it is enough for you to hear some Proofs made : When was it known in any Court, that Proofs should be taken only on one side ? So that you cannot acquit your own Justice, nor bring him any ways to Answer, he being gone, nor can you have any effect of the Proclamation, tho' the Lords join in it : Therefore unless you will have nothing done after all this, (for he may not be Guilty of all Charged, who yet hath made himself Guilty of what is Charged by flying) Read the Bill.

At last the Question was put, whether the Bill should be Read and Committed.

109 for it.

55 against it.

164

December, 18.

The Bill for Banishing the Earl of *Clarendon* was Reported from the Committee, and Read.

Sir *Rob. How.* I desire that to the Preface of the Bill this addition may be made.

That whereas the Earl of Clarendon was Impeached of Treason by the Commons, who desired he might be secured, but was not, and thereupon is fled.

And this to the end the protesting Lords may be gratified, who took so much Care of the Commons.

Sir *Rob. Carr.* Seconds the Motion.

Sir John Talb. I cannot Concur with that Motion, because we cannot take Notice of what the Lords do.

Sir Rich. Temp. We may take notice of Things in the Lords Books which are Records, and there the Protest is entered; and tho' not to gratifie them who owned our Right, yet we ought to take Care of our own Right: And that the World may see we have some Cause to Pass this Bill, neither deal so modestly with a Man who flies from Justice, as to use his own Word (*withdrawn*) but call it flying.

Sir Tho. Gem. Let the Words be, *that having been Impeached, and Moved to be Secured, hath withdrawn himself.*

Mr. Solicitor. The word *Moved*, destroys the Bill it self, the word of the Bill is to Unite the Two Houses, and this Amendment tends to destroy that End, for the addition to the *Preface* being insisted on, the Lords will add the Reasons for not Committing, and so revive the whole Matter again.

Let the Lords add in their Books what they will, your Books will as much justify you, as theirs them.

Sir Hum.

Sir *Hum. Wm.* Let the Words be added whether the Lords agree, or not, that it may appear upon our Books.

Mr. *Hugh Boscow.* The *Preface* is but History, yet add the Words, and let the Lords insert what they please, I should rather Concur with them, than leave out those Words.

Mr. *Vaugh.* Put no Question upon these Words, but whether the *Preface* shall go as it is ; The Bill in all probability is a safe Bill, because it came from them : But if you begin an Alteration, you your selves render it unsafe ; for if you put in these Words, then the Lords will add, *for want of Special Matter*, and so it will come to nothing.

Then the Bill was read the Third time.

Mr. *Vaug.* I am against the Word *Withdrawn*, and for the Word *Flight* instead of it, and in regard the Justice of this Bill depends upon the Word (*Flight*) put it expressly.

Sir *Rob. Carr.* I am against this Bill, tho' I was as earnest in the Matter as any one while I thought there was Proof, but now none appearing, I am against the Bill, because

cause you are Confirming what the Lords have done.

Mr. Vang. Many Men wonder that no Reason is given for passing this Bill, but the Question is mistaken, the Bill is grounded upon his Flight after his Impeachment, and his flying Implies some Guilt, if none, it is the safest Argument for any Man to run away, and then there is nothing to catch him. A Proclamation to a Man out of the Kingdom signifies nothing. But in the whole it is plain, that he saith, that finding the King's Justice obstructed in Parliament, he is fled.

Obj. But it will be said upon bare Flight, never was any Man Punished.

Answ. If one Man kills another and flies, tho' upon his Tryal he shall be acquitted, yet he shall never recover his Goods because of his Flight.

There has been several Acts of Banishment, *Spencer*, &c. And in this, is something more severe than in them, Namely, that none shall Correspond with him, then there is some advantage, Namely, that if he come in by the First of *February*, all shall be void; but when the Crime is laid, and his Flight makes him

him Guilty, he ought not to have a Day.

Then the Question was put for passing the Bill.

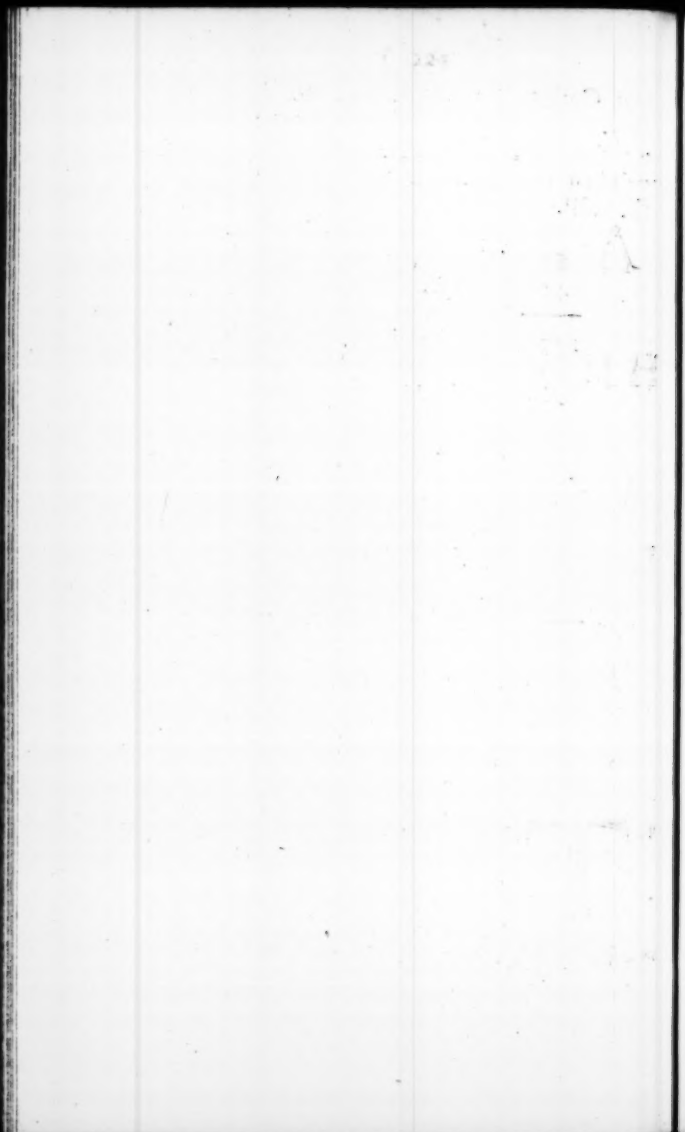
65 *For it.*

42 *Against it.*

107

And then the House Adjourned.

ARTICLES



ARTICLES
OF
HIGH-TREASON,
And other Heinous
MISDEMEANOURS:

Exhibited against *Edward* Earl
of *Clarendon*, Lord *High-
Chancellour* of *England*, in the
House of Lords; on the 10th
of *July*, 1663. By the Earl
of *Bristol*.

1. **T**HAT being in Place of highest
Trust and Confidence with
His Majesty, and having ar-
rogated a Supream Direction
in all His Majesty's Affairs, both at Home
and

and Abroad, hath Wickedly, and Maliciously, and with a Traiterous Intent to draw Scandal and Contempt upon His Majesty's Person, and to alienate from him the Affections of his Subjects abused the said Trust in manner following, viz.

That he hath Traiterously and maliciously endeavoured to Alienate the Hearts of His Majesty's Subjects from him by words of his own, and by artificial Insinuations of his Creatures and Dependances, that His Majesty was inclined to Popery, and had a Design to alter the Religion Established in this Kingdom.

That in pursuance of that Traiterous Intent, he hath to several Persons of His Majesty's Privy-Council, beld Discourses to this effect, viz.

That His Majesty was dangerously corrupted in his Religion, and inclined to Popery.

That Persons of that Religion had such Access, and such Credit with him,
that

*that unless there were a careful Eye
had unto it, the Protestant Religion
would be overthrown in this Kingdom;
and in pursuance of the said Wicked and
Traiterous Intent, upon His Majesty's ad-
mitting Sir Henry Bennet to be Princi-
pal Secretary of State, in the Place of
Mr. Secretary Nicholas, he hath said
these words, or words to this effect.*

*That His Majesty had given 10000l.
to remove a zealous Protestant, that he
might bring into that Place of High
Trust a concealed Papist, notwithstanding,
that the said Sir Henry Bennet is
known to have ever been both in his
Profession and Practice constant to the
Protestant Religion.*

*That in pursuance of the same Traite-
rous Design, several near Friends and
known Dependances of his, have said a-
loud, that were it not for my Lord
Chancellours standing in the Gap, Po-
pery would be introduced in this King-
dom, or words to that effect.*

That

That in pursuance of the aforesaid Traiterous Design, he hath not only advised and perswaded the King to do such things contrary to his own Reasons and Resolutions as might confirm and encrease the Scandal, which he had endeavoured to raise upon His Majesty as aforesaid, of his favour to Popery, but more particularly to allow his Name to be used to the Pope and several Cardinals in the solicitation of a Cardinals Cap for the Lord Aubigny, one of his own Subjects, and great Almoner at present to his Royal Consort the Queen.

That in pursuance of the same Wicked and Traiterous Design, he had recommended to be employed to the Pope one of his own Domesticks, Mr. Rich. Bealing, a Person (tho' an avow'd Papist) known to be trusted and employed by him in Dispatches and Negotiations concerning Affairs of greatest Concernment to the Nation.

That in pursuance of the said Traiterous Design, he being chief Minister of State, did himself write by the said Mr. Rich.

Mr. Rich. Bealing Letters to several Cardinals, pressing them in the King's Name to induce the Pope to Confer a Cardinals Cap on the said Lord Aubigny, promising, in Case it should be attained, exemption to the Roman Catholicks of England from the Penal Laws in force against them; by which Address unto the Pope for that Ecclesiastical Dignity for one of His Majesty's Subjects and Domesticks, he hath, as far as from one Action can be inferred, traiterously acknowledged the Popes Ecclesiastical Sovereignty, contrary to the known Laws of this Kingdom.

That in pursuance of the same traiterous Design, he has called unto him several Priests and Jesuits, whom he knew to be Superiors, of Orders here in England, and desired them to write to their Generals at Rome, to give their help for the obtaining from the Pope the Cardinals Cap for the Lord Aubigny, as aforesaid, promising great Favour to Papists here, in Case it should be effected for him.

I.

That

That he hath promised to several Papists he would do his endeavour, and said he hoped, to compass the taking away all Penal Laws against them, which he did in pursuance of the traitorous Design aforesaid; to the end they might presume and grow vain upon his Patronage, and by their publishing their hopes of a Toleration, encrease the Scandal endeavoured by him, and by his Emissaries, to be raised upon His Majesty throughout the Kingdom.

That in pursuance of the same traitorous Design, being intrusted with the Treaty betwixt His Majesty, and His Royal Consort the Queen, he concluded it upon Articles scandalous and dangerous to the Protestant Religion.

That in pursuance of the same traitorous Design, he concluded the same Marriage, and brought the King and Queen together, without any settled Agreement in what manner the Rights of Marriage should be performed, whereby the Queen refusing to be married by a Protestant Priest, in case of her being with Child,

Child, either the Succession should be made uncertain for want of the due Rights of Matrimony, or else His Majesty to be exposed to a suspicion of having been married in his own Dominions by a Romish Priest, whereby all the former Scandals endeavoured to be raised upon His Majesty by the said Earl, as to point of Popery might be confirmed and heightened.

That having thus traiterously endeavoured to Alienate the Affections of His Majesty's Subjects from him upon the score of Religion, he hath endeavoured to make use of all the malicious Scandals and Jealousies, which he and his Emissaries had raised in His Majesty's Subjects, to raise from them unto himself the popular Applause of being the zealous Upholder of the Protestant Religion, and a promoter of new Severities against Papists.

That he hath traiterously endeavoured to Alienate the Affections of His Majesty's Subjects from him, by venting in his own Discourse, and by the Speeches

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of

of his nearest Relations and Emissaries, opprobrious Scandals against His Majesty's Person and course of Life, such as are not fit to be mentioned, unless necessity in the way of Proof shall require it.

That he hath traiterously endeavoured to Alienate the Affections of his Highness the Duke of York from His Majesty, by suggesting unto him Jealousies as far as in him lay, and publishing abroad by his Emissaries, that His Majesty intended to Legitimate the D. of Monmouth.

That he hath Wickedly and Maliciously, contrary to the Duty of a Privy-Councillour of England, and contrary to the perpetual and most important Interest of this Nation, perswaded His Majesty against the Advice of the Lord General to withdraw the English Garrisons out of Scotland, and to demolish all the Forts built there, at so vast a Charge to this Kingdom.

That

That His Majesty having been graciously pleased to communicate the Desires of the Parliament of Scotland for the remove of the said Garrisons to the Parliament of England, and to act their Advice therein, the said Earl of Clarendon, not only perswaded His Majesty actually to remove those Garrisons, without expecting the Advice of his Parliament of England concerning it, but did by Menaces of His Majesty's displeasure, deter several Members of Parliament from moving the House, as they intended, to enter upon consideration of that Matter.

That he had Traiterously and Maliciously endeavoured to Alienate His Majesty's Affections and Esteem from this his Parliament, by telling His Majesty that there was never so weak and inconsiderable a House of Lords, nor never so weak and so heady a House of Commons, or words to that effect, and particularly, that it was better to sell Dunkirk, than to be at their Mercy for want of Money, or words to that effect.

That he hath Wickedly and Maliciously, contrary to his Duty of Counsellour, and to a known Law made last Sessions, by which Money was given, and particularly applyed for the maintaining of Dunkirk, advised and effected the Sale of the same to the French King.

That he hath contrary to Law, enriched himself and his Treasures by the Sale of Offices.

That contrary to his Duty he hath wickedly and corruptly Converted to his own use, great and vast Summs of publick Money raised in Ireland by way of Subsidy, private and publick Benevolences, and otherwise, given and intended to defray the Charge of Government in that Kingdom. By which means a supernumerary and disaffected Army hath been kept up there, for want of Money to pay them off, occasioned it seems to be because of the late and present Distempers of that Kingdom.

That having arrogated to himself a supream Direction of all His Majesty's Affairs,

Affairs, he hath, with a malicious and corrupt Intention, prevailed to have His Majesty's Customs Farmed at a far lower Rate than others do offer, and that by Persons, with some of whom he goes a share in, that, and other parts of Money resulting from His Majesty's Revenue.

July 10th,
1663.

BRISTOL.

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The Earl of Bristol having Exhibited against the Lord Chancellour, Articles of High-Treason, and other Misdemeanours. This Order was made by the House of Peers.

Die Veneris, 10 July, 1663.

ORDERED, by the Lords Spiritual and Temporal in Parliament Assembled, That a Copy of the Articles or Charge of *High-Treason* Exhibited this Day by the Earl of *Bristol*, against the Lord Chancellour, be delivered to the Lord Chief-Justice; who, with all the rest of the Judges are to consider whether the said Charge hath been brought in regularly and legally, and whether it may be proceeded in, and how, and whether there be any *Treason* in it or no, and make Report thereof to this House on *Monday* next if they can, or else as soon after as possibly they may.

Whereupon, all the Judges met at Serjeants.

jeants-Inn in *Fleet-street*, and my Lord of *Bristol* repaired to us thither, desiring to see the Order, which being Read, he told us he came out of respect to know of us whether we were informed how it came into the *House of Peers*, whether as a Charge or not; but one of the Judges, who had been present when it was delivered in, saying, *we were tied up by our Order*, his Lordship took some exception at the manner of his Expression, as if his Lordships Address was unnecessary at that time, and taking it as a rebuke unto him, went away; but according to our Order, which supposed it to be a Charge of *High-Treason*, and not mentioning *Misdemeanour*, we did upon Consideration unanimously agree upon this ensuing Answer, which on *Monday* the 13th of *July*, the Lord Chief-Justice *Foster* did deliver in, viz.

We conceive that a Charge of High-Treason cannot by the Laws and Statutes of this Realm be originally Exhibited by one Peer against another unto the House of Peers, and that therefore a Charge of High-Treason by the Earl of Bristol against the Lord Chancellor, mentioned in the Order of Reference to us of the 10th of this Instant July, hath not been regularly and legally brought in, and if the Matters alledged in the said Charge, were admitted to be true, altho' alledged to be traiterously done, yet there is no Treason in it. Which

Which *Answer* being given in, the Earl of *Bristol* took some exceptions at it, and some of the Lords inferred thence, that if it were Irregularly and Illegally brought in, it was a Libel; but we satisfied them that it was not under Consideration of us, whether it came in as an Information or Charge; our Order required us to give *Answer* to it as a Charge.

Secondly, We did not meddle with any thing concerning accusing him of *Misdemeanour*, for our Order reached only to *Treason*.

Thirdly, It did not follow that if this Charge were Irregular, or Illegal, that therefore he was Criminal: There might be Presidents to give Colour to such kind of Proceedings, for which, till it be declared or known that they are Illegal, they are Titular, and ought not to be punished.

But it was much insisted on, That we should deliver the Reason of our Opinions, the Lord of *Bristol* and his Friends seeming unsatisfied.

We *Replyed*, That it was never known, that when the Justices to whom *Questions* were referred from Parliament had unanimously agreed in their Opinions, that Reasons were required from them. Yet, notwithstanding, it being the desire of the
Lords,

Lords after some things premised, and a desire that this should not be drawn into an Example, (which the Lords assented unto as I took it, for no Order was entred concerning it, there being no Order as I think for delivering our Reasons entred) and it was agreed amongst us, that no Note should be reduced, least we might be required to deliver our Reasons in writing, nor had I time to digest it in writing, having only *Monday Night* after Conference with my Brethren to think upon it, I did on the next *Tuesday*, being the 14th of *July*, deliver the Reasons of all the Judges, of their Opinions, by their Consents. To the first Point, *That a Charge of High-Treason cannot originally be Exhibited by one Peer against another unto the House of Peers*, the Emphasis of the word *originally* was shewed.

For *First*, an Indictment of *Treason* against a Peer may be removed up to the Lords House to be tryed, as it was in the 31 *H. 6.* in the Earl of *Devonshir's* Case, but a Steward was then to be made.

Secondly, If an Impeachment came from the *House of Commons* unto the *Lords House*, we did not take upon us the Consideration, whether this could be proceeded in or not, for it was not the Case to which we were required to give *Answer*.

We

We *Replied*, Upon the Statute 1 *H. 4.* Chap. 14. which recits the many great Inconveniencies and Mischiefs by Appeals, and provides that all Appeals of Things within the Realm, shall be Tryed and Determined by the good Laws of the Realm made and used in the time of the King's noble Progenitors, and Appeals of Things out of the Realm before the Constable and Marshal: But We relyed upon the Clause ensuing, and thereupon it is accorded and assented, That no Appeals be from thenceforth made, or in any wise pursued in Parliament in time to come. I shewed Appeals in this Statute, and Accusations by single Persons were one and the same Thing, and that this Statute reached to all Appeals, Charges, Accusations or Impeachments delivered in, in Parliament, whereupon the Person Accused was to be put to his *Answer*, and that they were but several Names of the same Thing, I shewed first Historically, that the Appeals the 11 *R. 2.* and 21 *R. 2.* were but Accusations by those Lords of Felons against the other, and differed from the Case of the Duke of *Hereford* and *Norfolk*, which was to be tryed as 21 *R. 2.* Pl. Cor. in Parl. No. 19. is by the Course of the Civil Law, and thereupon Batle was waged. That tho' it concerned *H. 4.* in Interest to confirm the 11 *R. 2.* and
 Repeal

Repell the 21 R. 2. he being Appellant in the former, yet he saw the Mischief so great, that he himself made Provision against them for the time to come; and indeed, the Mischief was so great, that it ceased not after the destruction of many Lords and Families (there being *lex talionis* in that 21 R. 2. used towards most of those Appellants in the 11 R. 2.) till it tumbled King R. 2. First out of his Throne, and then into his Grave.

That there were but two sorts of Proceedings in *Capitalibus*, the Suit of the Party which was called an Appeal, or the Suit of the King, who ought to proceed by Indictment, and so to Tryal by vertue of *Magna Charta*. *Nec super eam ibimus*, &c. and that, in an Appeal, being the Suit of the Party, there was no Prerogative of appearance if it were an Appeal at the Common-Law, 10 Ed. 4. Lord Gray's Case. That an Appeal was taken in our Law-Books frequently for an accusation by the Party, I scited *Westm.* the 1st, Cap. 14. where the words Appeal reaches to Indictment. And 9 Cook, 119. Lord Zouch's Case, that an Appeal of two significations, one general and frequent in our Books for an Accusation, and *Stamford*, 142. In Case of an Approver, the Felon after Confession may Appeal, that is, (saith he) accuse others, Coadjutors

jutors with him to do the Felony. C.C. 189. Appellant, cometh from the French word *Appeller*, which signifies to *accuse*, or *appeach*, and C. C. 287. Appel signifieth an *Accusation*; and therefore to Appeal a Man is as much as to accuse, and in ancient Books he that doth Appeal a Man is called *accusator*, vide 9 Ed. 2. *Articuli Cleri*, Cap. 16. That I knew no reason why in those tumbling Times of R. 2. (which caused this Statute, for the Statute-Roll is *comant ad autermant este us en temps le darren Roy*, R. 2.) They should proceed by way of Appeal, but because they were then allowed at the Suit of the Party, to accuse any other of *Treason*, but at the King's Suit there ought to be an Indictment, and an Indictment could not be found but by Jury.

That in all other Cases, an Appeal was to be brought by the Party concerned, the Wife or Heir, or Party Robbed, &c. But in Case of *Treason*, any Man may Appeal another, and therefore in all reason it must be understood of an *Accusation*, and any Man might accuse another of *Treason*; and if it can be proved by Witnesses, it must not be Tried by Battle, as other Appeals may. I concluded that the 8 H. 6. No. 38. this Statute, the 1 H. 4. Cap. 14. is recited, and desired it should be duely kept and put in Execution, which
was

was granted, that *Stamford* 78. See *Pl. Cor.* 31. 132. agree that Appeals of *High-Treasons* were not commonly used to be Sued in Parliament, till the 1 *H. 4. Cap.* 14. Since which time this manner of Appeal hath gone out of use ; and I said, I had searched many Presidents, and tho' of late, there may be a President (as it was of the Earl of *Bristols* Father against the Duke of *Buckingham*, of some kind of Impeachment) yet I did confidently believe there was not since that Statute, 1 *H. 4. Cap.* 14. any one President of such an Impeachment at the Party-Suit whereupon there was any Indictment : In truth in the Earl of *Bristol's* Case, the *Common's House* did Impeach the Duke of *Treason*, and so the Earl of *Bristol's* Impeachment proceeded not.

For the *Second Point*, That there was no *Treason* in the Charge, tho' the *Matters* in it are alledged to be *Traiterously* done. I said we had perused each Article *seriatim*, and we had found no *Treason* in them, the great Charge, which is endeavoured to be proved by many Particulars, was, That he did *Traiterously*, and *Maliciously*, to bring the King into Contempt, and with an intent to *Alien* the Peoples Affections from him, say, &c. such and such words, &c.

And

And so it runs on, That in pursuance of the *Traiterous Intent*, &c. he did, &c. and that in farther pursuance of the said *Traiterous Design*, &c. And in like manner was most of the Articels upon which the Characters of *Treason* seemed to be fixed. I said that it is a transcendant Misprision or Offence to endeavour to bring the King into Contempt, or to endeavour to Alienate the Peoples Affections from him, but yet it was not *Treason*. This Statute, 13 *Car.* 2. *Cap.* 1. makes *Treason* during the King's Life: But if a Man calls the King *Heretick*, or *Papist*, or that he endeavours to introduce *Popery*, (which is more in expresse Terms than the Article of that kind insinuates) or by Words, Preaching, Prayer, to stir up the People to hatred or dislike of the Person of His Majesty, or the Established Government; the Penalty is only Disability to enjoy any Place Ecclesiastical, Civil, or Military, and subject to such Penalties as by the Common-Law or Statute of this Realm may be inflicted in such Case, (which is Fine and Ransom, with Imprisonment) and it limits a time and manner of Prosecution.

There was an *Objection* made yesterday upon the 25 *E.* 3. That this being in Parliament, the King and Parliament had Power to declare *Treason*, and then we

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ought

ought to have delivered our Opinions with a qualification, unless it be declared *Treason* by Parliament where this Charge is depending ; to this I *Answer'd*.

1. 'Tis not *Treason* in *presenti*, and if such a Declaration should be *non constat*, whether it would relate to the time past ?

Secondly, That I conceived that the Statute as touching that *Declaratory Power*, extended but to such Cases as were clearly *Felony*, as Single Acts, if not *Treason*. (the words being) *Whether it be Treason or other Felony* ; but in respect of the doubts of *Escheats*, which, if *Treason*, belonged to the King, if *Felony*, to the Lords of the *Fee*, it was left to the Parliament. I did not say we Resolved the Point.

Thirdly, That admitting the *Declaratory Power* did extend to other Cases than such as were before the Judges, and was not taken away by 1 *M. Cap.* or any other Statute, yet I read my Lord *Cooks* Opinion at large, *Pl. Cor. Fol. 22.* That this Declaration must be by the King, Lords and Commons, and by any two of them alone ; and we were now in a judicial way before the *House of Peers* only ; and I did affirm as clear Law, that by this judicial way no *Treason* could be declared nor adjudged, but as were expressly within the Letter of the 25 *E. 3.* and said, That Statute 25 *E. 3.* was a
second

second *Magna Charta*, and that their Ancestors thought it their greatest Security to narrow, and not to enlarge *Treason*, and Cited 1 *H. 4. Cap. 10.* to which in the Parliament Roll is added *Rot. No. 17.* (it coming of the King's Free-grace) That the Lords did much rejoyce and humbly thank the King : And I read the Statute 1 *M. Cap. 1.*

That the now Earl of *Bristol* in my Lord of *Sraffords* Case, was the great Assessor of the Law against Constructive and Accumulative *Treason*, which if admitted, their Lordships could better suggest unto themselves, than I exprest, how great a Door they would let open to other Inconveniencies and Mischiefs to the Peerage. I concluded with reading the Act, 14 *Car. 2.* for Reversing the Attainder of the Earl of *Strafford*; the first part whereof I read to them, wherein is expressed, That they who Condemned him, did purposely make an Act of Parliament to Condemn him upon an Accumulative *Treason*, none of the pretended Crimes being *Treason* a-part, and so could not be in the whole, if they had been proved.

After I had spoken to this effect, the Earl of *Bristol* seemed to acquiesce, inso-much as concerned our Opinions as the

Case was delivered to us, but it being to be put to the *Question*, whether the Lords did Concur with the Judges Opinions, and himself being concerned in the Illative, that therefore the Charge was Illegal and Irregular; yet not being intended by him, as he said, as a Charge, but an Information he desired (tho' as the Case was put to us, it was a good Inference) that the Voting of that might be spared till it was *Resolved* by the Lords whether he delivered it in as a Charge, or only as an Information for the Matter of the Charge if it should be thought fit for their Lordships to proceed in it: After some Debate upon the *Question*, the Lords *Resolved* the same Day according to our Opinions.

First, That a Charge of *High-Treason* cannot by the Laws and Statutes of this Realm be originally Exhibited by one Peer against another, unto the *House of Peers*.

Secondly, That in these Articles, if the Matters alledged in them were admitted to be true, there is no *Treason* in them, and because the Lords unanimously Concurred in them, (my Lord of *Bristol* freely as any other) it was by order entered, that these Votes were *Nemine Contradicente*.

Note,

Note, That in Judge *Huttons Reports*, *Fol.* the Resolution of the Judges is expressed to be, That a Peer cannot be Impeached but by Indictment, and Mr. *Rushworth* in his Collections, *Fol.* 272. expresses such an Opinion to be delivered by the Judges in 1 or 2 *Car.* but upon search it was found to be entred in the Journal of Parliament of that time, but it was cautions referring to the Common-Law only. But that, for Proceedings in Parliament, did not belong to them to Determine, or to that effect; but no mention of 1 *H.* 4. *Cap.* 14. It hath been credibly reported that some of the Judges in my Lord of *Strafford's Case*, being asked some Questions, did with the like Caution deliver their Opinions, and did speak with Reservations, (as the Case is put) tho' they upon Hearing, did know the Case misput; which, after, troubled the Conscience of one of them, (*ut audiui*) being a grave learned Man. *Vide Peacocks Case, Cook Fol.* But we, having the Case referred to us in Parliament upon Articles Exhibited in Parliament, did Resolve to deliver our Opinions without any such Reservation; and the Act of 1 *H.* 4. being exprest against Appeals in Parliament, (and of Acts of Parliaments after they are once made, none under the King, and without him are Interpreters but the Judges. See *Kings Answer Printed, in the old Print of*
3 *Car.* 1.

3 Car. 3. at the end of the Petition.) And therefore did deliver these Opinions, which I conceive of great Benefit to the Lords themselves, and a just ground for farther enquiry to be made, whether such Impeachments may be in the *House of Peers* for other *Misdemeanours*, without the King's leave, or being Exhibited by his Attorney.

And secondly to take into Consideration the Validity of Impeachments of *Treason* by the *House of Commons*, notwithstanding the late *Presidents* which yet ended in a Bill, and so in the Legislative, not Judiciary Way.

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